

No. 10583

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME II
Pages 499 to 836

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

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PAUL P. O'BRIEN,

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JOHN EVANS

[472]

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name, please.

The Witness: John Evans.

Trial Examiner Riemer: What is your address?

The Witness: 150 North Johnson.

Direct Examination

By Mr. Penfield:

Q. Where are you working at the present time?

A. Union Pacific Stages.

Q. What capacity? A. Bus drivers.

Q. Did you ever work for the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truck driver.

Q. For what period of time?

A. Beginning on September 20 of 1939 until November 14, 1941. [473]

Q. Who was your immediate supervisor?

A. Kermit Rice.

Q. Did you receive any directions from anyone else? A. Yes, sir.

Q. Who was that? A. Spike Henninger.

Q. At the time that you came to work for the company, were you a member of any labor organization? A. No, sir.

Q. While you worked for the company, did you become a member of the Idaho Refining Company Employees Benefit and Labor Association?

(Testimony of John Evans.)

A. Yes, sir; I did.

Q. In the six months preceding your discharge, do you recall any talk about an outside union among the truck drivers?

A. Yes, sir; I do.

Q. When did you first hear such talk?

A. Well, the first that I heard of it was somewhere around about the 16th of July in 1941.

Q. Is there anything that fixes the 16th of July in your mind? A. Yes, sir.

Q. What?

A. Well, I had been away on my vacation and came back and returned to work on the 16th of July and that is the first that I heard about it, when I came back. [484]

Q. Who participated in this discussion?

A. The truck drivers.

Q. What was the nature of the discussion?

Mr. Merrill: We object to that on the ground it would be hearsay, there is no showing that the company knew anything about it whatever.

Trial Examiner Riemer: The objection is overruled with the reservation of your right to move to strike. Read the question.

(Last question thereupon read aloud by the reporter as hereinabove recorded.)

A. Well, while I was away in the East, they had had some kind of a meeting, or something, and the rate of pay, the system of pay, had been changed from an hourly basis to a monthly basis, and the boys all felt they were taking a cut by

(Testimony of John Evans.)

this change and they were pretty much dissatisfied, and we decided that the best way to get better working conditions and a better rate of pay would be through an organization outside of the company.

Q. As the result of this discussion, was any action taken? A. Yes, sir.

Q. What action?

A. Eventually all the drivers excepting one joined the union.

Q. Was that sometime after this? A. Yes.

Q. Did you join the Union? [485]

A. I did, yes, sir.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Mr. Penfield: Will you read the last question and answer?

(Thereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Mr. Merrill: Which Union do you mean?

Q. (Mr. Penfield, continuing) Teamsters' Local 440? A. Yes, sir.

Q. I show you Board's Exhibit 5-H, and ask you to tell me what that is?

A. That is an application blank for membership in the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Q. Does it set forth the Local Number?

(Testimony of John Evans.)

A. Local No. 440.

Q. Is that your signature appearing on it?

A. Yes, sir.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Penfield, continuing) Where did you sign this application card which is Board's Exhibit 5-H?

A. In Mr. Rosqvist's office in the Labor Temple.
[486]

Q. In whose presence?

A. Mr. Rosqvist and Tom Brandt.

Q. Were any of the truckdrivers present?

A. I think that there were two with me.

Q. Do you recall which two?

A. James Ayers and Leonard Fowler.

Trial Examiner Riemer: Can you tell us when it was that you signed this application card?

The Witness: On the 29th of September, 1941.
[487]

Q. (Mr. Penfield, continuing) What happened on the morning of November 14, 1941?

A. Well, we were all fired.

Q. Well, will you explain just what you did that morning?

A. Well, I went over to the refinery with the rest of the boys, and along about nine or—between nine and nine-thirty in the morning, and waited over there until 11:45, and I got my check.

(Testimony of John Evans.)

Q. Whom did you see when you went over to the refinery?

A. Well, I seen all the drivers who were in town at that time. [490]

Q. Had you been called out to the refinery that morning? A. No, I hadn't.

Q. Had you been out on a trip the day before?

A. Yes, sir.

Q. What time had you gotten in?

A. I got in Pocatello at 9:30 on the evening of November 13.

Q. Did you check the board to see if you were assigned to a trip the following day?

A. Yes, I did.

Q. Was such an assignment posted?

A. Yes, sir.

Q. Where were you assigned to go?

A. As near as I remember it, to Idaho Falls.

Q. Was any particular time set for your departure? A. No, there was not.

Q. Did you receive your check on November 14? A. Yes, sir.

Q. At what time? A. 11:45 a.m.

Trial Examiner Riemer: I am not sure yet, Mr. Penfield, what happened on November 14. I wish that you would go into that.

Q. (Mr. Penfield, continuing) Will you explain to us further what occurred in the plant on the morning of November 14?

A. Well, Mr. Rice had called most all of the drivers that were in town—— [491]

(Testimony of John Evans.)

self decided that we would go to the office and see if we could find Mr. Rice to find out what was going to take place. We went in the office and stopped at the telephone booth where the telephone girl is, and stood there for a few minutes, and Mr. Rice came out, and he had the checks all in his hand, and he seen Jim Ayers and myself standing there by the door, and as he went by, he handed us our checks, and never said anything to us, just handed us our checks and went on out, and we went out in front of the office and stood there and talked a few minutes, then followed Mr. Rice on out to the garage where the rest of the boys were, and when we got out there, he was giving them their checks, and from then on, we just scattered out and went home.

Q. (Mr. Penfield, continuing) Were all the truck drivers present at the plant that morning?

A. No, sir.

Q. How many of the whole crew?

A. Well, there were about 5 or 6 of them I think that was out on trips.

Q. Do you know who those were?

A. Well, most of them, yes.

Q. Who were they? [494]

A. P. P. Stanger was out. He was in Salmon, Idaho, and Leonard Fowler was out, he was on his way back from—I wouldn't say whether it was Boise, either Boise or beyond there, I don't know; it was a long trip, anyway; and Boyd Cornia, was in Blackfoot; John Ray was in Twin Falls, I don't

(Testimony of John Evans.)

remember whether there was any more than that out or not, but I know that there was that many.

Q. That is the best of your recollection?

A. To the best of my recollection, yes.

Q. Do you know whether any of them had left on that morning? A. Yes.

Q. Who?

A. Well, Stanger had left on that morning.

Q. What time?

A. I think about 1:00 o'clock on the morning of November 14.

Q. Anyone else?

A. Well, John Ray had left that morning, because this was a short trip—we always did leave right around four o'clock in the morning on the Twin Falls trip.

Q. Do you know whether those drivers came in that same day? A. Yes, they did.

Q. Did they also receive their checks?

A. Yes, sir.

Q. Did you know all the truckdrivers who were discharged on November 14? [495]

A. Yes, sir.

Q. Do you know whether or not there were some who had never had accidents?

A. Yes, sir.

Q. Do you know which ones?

Mr. Merrill: We object to that on the grounds that it would be merely a conclusion of the witness and would be purely hearsay.

Mr. Penfield: He may know.

(Testimony of John Evans.)

Mr. Merrill: Except as to himself.

Mr. Penfield: He knows all the drivers.

Mr. Merrill: Well, he would have to get the information from them.

Trial Examiner Riemer: I will take it for what it is worth.

Mr. Penfield: I understood that the Examiner wanted to get some information——

Trial Examiner Riemer: I will hear him as to what he knows about the others. Repeat the question.

(Last question read by the reporter.)

A. Yes, most of them.

Trial Examiner Riemer: I don't think that you understood, Mr. Witness. Mr. Penfield wants to know which of the drivers never had any accidents, if you know?

The Witness: I could tell you the ones that never had an accident after I went to work there.

[496]

Mr. Penfield: That's right, that's all that you can testify to.

The Witness: But I could not testify what they had done before I came to work for the company.

Q. (Mr. Penfield, continuing) And you have testified that you went to work on what date?

A. On September 20, 1939.

Q. Well, I show you Board's Exhibit 3, which purports to be a list of drivers with the periods that they began work, and ask if you can tell

(Testimony of John Evans.)

me which of the drivers appearing on that list never had an accident?

Mr. Merrill: May our objection go to this whole line of interrogation?

Trial Examiner Riemer: Let the record show an objection to the entire line of inquiry, and an exception to my ruling.

A. Well, here the first one is James Ayers, and S. R. Burkholder—I will withdraw S. R. Burkholder, there is a question in my mind about him; K. C. Brower, Guy Campbell, Howard Davis, Arthur Heckert, Carl Hill, John Ray, Leland Stanford, and R. E. Miller.

Q. Did any of those persons you named come to work for the Company before you did?

A. Yes.

Q. Which ones?

A. James Ayers was there, and Victor Ellingford. [497]

Q. You didn't testify that he never had an accident? A. No.

Q. I mean the ones that you testified who had never had an accident?

A. James Ayers was there before I was. He is an older man than I was, but as far as I know, he never had an accident.

Q. Well, these are the dates on which they came to work.

A. I think all the rest of them I named were younger men than I was. [498]

(Testimony of John Evans.)

Q. Do you recall a conversation with Mr. Henninger in the early part of December, 1941?

A. Yes, sir.

Q. Who is Mr. Henninger?

A. He is the dock foreman, and also the truck dispatcher.

Q. Where did this conversation occur?

A. In the loading dock.

Q. Who else was present?

A. No one—myself and Mr. Henninger.

Q. Will you tell us what the substance of this conversation was?

A. Well, we were sitting in there, just the two of us, and we were talking about the drivers being fired, and Mr. Henninger told me that it was sure too bad the way it happened, the [502] insurance being cancelled, and all of us being out of a job. And I told him that I knew better than that, that it wasn't—that our discharge wasn't caused from the cancellation of insurance, that we was fired because we joined the union. He kind of hung his head and studied a little bit, and he said, "Well, maybe you are right." He said, "I knew you fellows belonged to the union a long time before you were fired." He said, "I found it out during the hunting season over at Jerome and Twin Falls, through that country, through some of the service station operators." He also said that Gilbert Moyle and Mr. Copening had found it out through the same sources over there about the same time. I told him that I intended to take it a little further and prove that it wasn't insurance.

(Testimony of John Evans.)

Q. When was the hunting season in 1941?

A. The hunting season starts in along about, shortly after the first of September, and last up until the latter part of December.

Trial Examiner Riemer: I don't think that the witness has placed the time of this conversation.

Mr. Penfield: I believe that he has placed the date. You mean the hour of the day?

Trial Examiner Riemer: The time of the alleged conversation with Henninger.

Mr. Penfield: In the early part of December, 1941. [503]

Cross Examination

Q. (Mr. Merrill) When did you commence working for the refinery company?

A. September 20, 1939.

Q. Most of the men of whom you spoke and whose names you have mentioned, commenced work after you did, I believe?

A. The majority of them, yes, sir.

Q. As a matter of fact, there were several of them on the extra list, were there not?

A. There were a few. [506]

Q. After the change in the method and rate of pay in June, 1941, your salaries were fixed, I understand, at \$160 a month? A. Yes, sir.

Q. And you felt that that was not satisfactory?

A. Yes, sir.

Q. You always felt that was unsatisfactory?

A. Was unsatisfactory, yes.

(Testimony of John Evans.)

Q. You presented a proposed agreement to the company with the same rate, though, didn't you?

A. No, sir.

Q. Now, you have mentioned individuals who did not have accidents. Who did have accidents? Will you give us those names?

A. H. H. Hendrickson had an accident while I was there.

Q. Where did he have that?

A. Malta, Idaho.

Q. What kind of an accident was it?

A. Traffic accident.

Q. When did it occur, if you know?

A. I couldn't say the date on it, but I believe that it was in November.

Q. Rather a serious accident, was it not?

A. Yes.

Q. Who else had an accident?

A. Buck Whitesides had an accident. [507]

Q. Where did his accident occur?

A. I never did know for sure about that. It was down along Layton, Utah, somewhere.

Q. That was when?

A. That was in the fall of 1941.

Q. Of 1941? A. 1941.

Q. That, too, was a very serious accident?

A. Yes, sir.

Q. Upwards of several thousand dollars in expense? A. I couldn't say to that.

Q. Well, who else had had an accident?

A. Stanley Merrill had had an accident.

(Testimony of John Evans.)

Q. Where did he have his accident?

A. Boise, Idaho.

Q. Is that "Sandy" or Stanley?

A. Stanley.

Q. When did he have his accident?

A. That was in the spring of 1940, to the best of my recollection.

Q. 1940 or 1941?

A. Maybe it was 1941,—it could have been.

Q. Yes. Who else had had an accident?

A. Bob Patterson had an accident a few days before we were laid off.

Q. Where did he have his accident? [508]

A. Four miles west of Glenns Ferry.

Q. What did that accident consist of?

A. He ran off the road into the borrow-pit and turned over.

Q. And rather demolished the property?

A. Part of it, yes.

Q. That was a rather serious accident?

A. Yes.

Q. When was that with reference to the 14th of November?

A. I would say that it happened around pretty close to the first of November.

Q. As a matter of fact, it was the 5th, wasn't it?

A. I could not say as to the date, but it was around about that time.

Q. Who else had had an accident?

A. I understood Vic Ellingford had an accident before I came to work.

(Testimony of John Evans.)

Q. Do you know when Vic Ellingford had an accident?

A. No, sir; I couldn't testify to that.

Q. Do you remember the accident he had four miles west of Burley on September 6, 1941?

A. No, I don't.

Q. You don't know that he had an accident on that date? A. No.

Q. Who else of these men have had accidents?

A. It seems to me that Pat Burkholder had a little accident on [509] Malad Hill when the truck slid off in the borrow-pit.

Q. That was a serious accident, too, wasn't it?

A. I don't know. I was living at Jerome at the time, and I don't know much about it.

Q. Who else of these men had accidents?

A. Well, I couldn't say.

Q. What about Boyd Cornia?

A. The only accident that I know of that Boyd Cornia had, while I was working here, he run off the road over here at the Snake River Bridge, this side of Rupert.

Q. And demolished the property? A. No.

Q. It was a rather expensive loss, wasn't it?

A. No.

Q. \$2500 as a matter of fact?

A. No, not the one that I am thinking of.

Trial Examiner Riemer: Demolished the bridge or the truck?

The Witness: He didn't demolish anything.

(Testimony of John Evans.)

Q. (Mr. Merrill, continuing): Do you know what accident he had on May 15, 1941?

A. No, sir.

Q. Then he may have had two accidents.

A. He might have, I couldn't say as to that.

Q. Do you recall any other accidents?

A. No, sir. [510]

Q. Do you recall the accident of Wayne Douglas?
A. Yes, sir.

Q. When did that occur?

A. That occurred in the summer of 1941.

Q. As a matter of fact, didn't he also have an accident on October 16, 1941?

A. Well, I don't know about the dates. The only accident that I remember of Wayne Douglas having is one in Weiser.

Q. Weiser, Idaho, he wrecked his truck?

A. Yes.

Q. That was rather a serious accident?

A. Yes.

Q. Would you say that the middle of October, 1941, was about the right time?

A. Well, it was around there somewhere. I couldn't remember the exact date.

Q. Myron Whitesides—have you mentioned him?

A. Yes.

Q. He had the accident in Layton, Utah?

A. Yes.

Q. That too was a serious accident?

A. Yes. [511]

(Testimony of John Evans.)

Q. And you have mentioned Bob Patterson as having had an accident? A. Yes.

Q. And you have mentioned Myron Whitesides as having had accidents, haven't you?

A. Yes, sir.

Q. Now, you remember then at least eight of the group that have had accidents, don't you?

A. Yes, sir.

Q. Now, isn't it true, Mr. Evans, that the truck drivers were frequently called and warned about accidents?

A. I couldn't say to that. I never was.

Q. Didn't you ever sit in at hearings where a member of the company told the truckdrivers that it would be necessary for them to be more careful?

A. I have been to safety meetings, yes, and I have heard them cautioned to drive carefully.

Q. Were you in attendance at a meeting one time when you were told that the insurance would be cancelled if more caution was not exercised?

A. No, sir.

Q. Did Mr. Rice tell you that? A. No, sir.

Q. Haven't you heard from others that that was the fact?

A. I might have heard it—just hearsay. [514]

Q. Haven't other truckdrivers mentioned it to you? A. I can't say they have.

Q. Well, have they? Do you remember?

A. I wouldn't say they have.

Q. And you wouldn't say they haven't?

(Testimony of John Evans.)

A. No, I wouldn't say that they haven't.

Q. You know that before the discharge, there was some danger of the insurance being cancelled?

A. No.

Q. Nobody ever mentioned that to you?

A. No.

Q. How long had you lived here near the refinery, prior to November 14?

A. Let's see, I moved back from Jerome on the 10th of June out to the refinery there, and I lived there from then to the time we were fired.

Q. After the 10th of June, you were away for a while?

A. No, before the 10th of June, from the latter part of October in 1940 until the 10th of June in 1941, I lived in Jerome Idaho.

Q. Did Mr. Gilbert Moyle ever talk to the truck-drivers? A. I guess he did.

Q. Were you present at the meeting?

A. Never but one.

Q. And he told you then to be more careful?

[515]

A. No, sir.

Q. Did he speak of the care necessary to be exercised in driving these trucks? A. No, sir.

Q. Were you present when agents of the insurance company addressed them?

A. At one meeting.

Q. When was that?

A. I don't just remember, but it was a meeting held in the change room a short time after the

(Testimony of John Evans.)

change room was completed and two of the insurance company representatives were here, I believe, from Salt Lake.

Trial Examiner Riemer: Would you read me that answer?

(Whereupon the answer referred to was read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Merrill, continuing): And it was discussed with the truck drivers, the danger of these accidents?

A. They didn't at that meeting. The insurance company representatives did not in any way criticize the drivers on their driving.

Q. Did they not explain the necessity of careful driving? A. Yes, sir.

Q. Did they make any comment as to what would happen if careful driving was not engaged in?

A. No, sir. [516]

Q. As a matter of fact, you knew soon after you got out there that morning, did you not, that you were laid off because of this insurance difficulty?

A. Well, I heard it through hearsay, through the rest of the drivers.

Q. Yes, that is what I wanted to know, the drivers were discussing it with you, telling you that you were all laid off because the insurance had been cancelled upon the trucks?

A. That wasn't exactly the topic of conversation.

Q. I am asking you if you were not told by some of the drivers at least during that waiting period, that you had been laid off because of that?

(Testimony of John Evans.)

A. We were told that, yes.

Q. Who told you?

A. It was just talked about among the bunch.

Q. So, when you received your check, you knew the reason for your lay-off? A. Yes, sir. [519]

Q. When you went up to join the Union, did Mr. Archibald go with you? A. No.

Q. Did Mr. Archibald have anything to do with your interest in this matter? A. No.

Q. He had never tried to organize you?

A. No.

Q. Nor any of the other drivers, so far as you know?

A. I know that he was collecting some of the initiation fees.

Q. He never passed out to you any applications?

A. No, sir.

Q. He never collected any initiation fee from you? A. No.

Q. You never saw him pass out any application to any of the drivers? A. I didn't.

Q. And you did not see him collect initiation fees from any other driver? A. I did not.

Q. And when you went up to make your application, he wasn't around? A. No, sir. [522]

Q. And some other drivers were with you?

A. Just two.

Q. Did you see any other drivers up there then?

A. Not at that time, no. [523]

Mr. Merrill: I beg your pardon.

(Testimony of John Evans.)

Q. (Mr. Merrill, continuing): The conversation that you had with Mr. Henninger on December 11, 1941, at which you were offered re-employment by the company was before the conversation that you have been speaking about in which you discussed with Henninger the reason for the discharge?

A. Yes.

Q. Now, directing your attention to the discussion with Mr. Henninger on December 11——

A. That's right—1941.

Q. ——1941, he then told you that the company would give you employment at the same rate per hour you had been receiving prior to the change-over to a monthly wage on the trucks, didn't he?

A. No, sir.

Q. What did he tell you?

A. It was a \$24 a week job.

Q. Did you not tell him then that the union representatives had advised you not to accept any employment if offered?

A. I didn't tell Henninger that, no, sir.

Q. What did you tell him about what the Union representatives told you?

A. The unions didn't tell me anything about whether I could go to work or not. They had advised some of the other boys [533] before that.

Q. Not to go to work?

A. Not to go to work.

Q. But they hadn't advised you?

A. No, sir.

Q. Did you tell Henninger that?

(Testimony of John Evans.)

A. Yes, sir.

Q. Did Henninger make any mention of the fact that the unions were opposed to your going to work?

A. Yes, sir.

Q. Did you tell him that you knew that?

A. I did.

Q. And why were they opposing your going to work?

A. Because it was not the same job that we were fired off of.

Q. Yes, and as a matter of fact, wasn't it mentioned there that the union officials told you that they thought it might hurt your case before the Labor Board if you accepted employment?

A. That is what Mr. Brandt told us, yes.

Q. So you refused employment of any other kind or character because Mr. Brandt told you not to go to work?

A. I didn't, no, sir.

Q. Others did?

A. I couldn't say; I couldn't speak for the others.

Q. As a matter of fact, you told him that Mr. Brandt had [534] given that information?

A. Yes.

Q. Wasn't that one of the reasons that you refused employment when Mr. Henninger suggested that the company would give you additional employment?

A. No.

Q. You didn't accept that employment?

A. No.

(Testimony of John Evans.)

Q. Did you tell Henninger that is the reason that you wouldn't accept it? A. No.

Q. Did you tell Henninger why you wouldn't accept employment? A. I did.

Q. What did you tell him?

A. I told him that I wouldn't go back to work and start at the bottom of the list after I had been there two years and a half, and start again at \$24 a week. I told him that if he would give me a job anywhere in the plant that would equal \$160 a month, I would take it in a minute.

Q. Irrespective of whether it was driving or not?

A. Anything.

Q. Isn't it a fact that he offered you a job that paid you 60 cents an hour, which was the same amount that you had been receiving prior to the changeover to the monthly basis?

A. I don't recall what the hourly basis was, but Mr. Henninger [535] told me that it would amount to about \$24 a week.

Q. Now, you say that you had a conversation with him later in December? A. Yes, sir.

Q. I withdraw that. Did you belong to the union at the time that Mr. Henninger offered you that job? A. I did. [536]

Q. That was all he said at that moment with respect to that? A. That was, yes, sir.

Q. Did they have more jobs in the winter than in the summer?

A. No, they had more in the summertime than in the winter.

(Testimony of John Evans.)

Q. All right, then, it would be possible that some of these drivers would be turned out, anyway, wouldn't it? A. Well, it is possible.

Q. After Mr. Henninger made that comment, what further comment did he make?

A. Well, not any for a little bit.

Q. I believe that you mentioned the fact that a couple of the drivers had been—I don't know what word you used—had been talking to various other station operators?

A. That is what he told me, yes.

Q. Henninger told you that? A. Yes.

Q. Who did he mention?

A. Stanley Merrill and Buck Whitesides.

Q. When you say that Mr. Henninger told you why you had been laid off, what did you say?

A. I told him that I knew better than that, that we were not fired because of the cancellation of insurance, but because of union activities.

Q. When you say that Mr. Henninger told you why you had been laid off, what did you say? [538]

A. I told him that I knew better than that, that we were not fired because of the cancellation of insurance, but because of union activities.

Q. You didn't get any such information from any officer or supervisory employee of the company?

A. No, sir.

Q. That was just your own conclusion?

A. Partly.

Q. You didn't get any such information from the company—— A. No.

(Testimony of John Evans.)

Q. —or any officer or supervisory employee of the company? A. No. [539]

Q. (Mr. Merrill): When you say Mr. Henninger told you this, who was present?

A. No one.

Q. Just you and Henninger?

A. That is right, yes, sir.

Q. And it was on the loading dock, you say?

A. Yes, sir.

Q. And at the refining company?

A. Yes, sir.

Q. Sometime after the 11th of December?

A. Yes, sir.

Q. But you made no note of that date?

A. No.

Q. And no note of the conversation?

A. No.

Q. But you did make the note of the previous conversation that you testified to?

A. Yes. [545]

Q. Did you ever go out there with Boyd Cornia?

A. Yes, I did.

Q. It wasn't at that time, then? A. No.

Q. Where did Mr. Henninger say that he had been hunting?

A. Over in the Jerome country, around Jerome and Twin Falls. He didn't specify any certain place.

Q. Did he tell you that he had been hunting over in that country?

A. He said during the hunting season. He didn't

(Testimony of John Evans.)

say that he had been hunting, but I imagine he had, by his remarks.

Q. And that, you say, was over in the Jerome country? A. Yes, sir. [546]

Q. (Mr. Merrill, continuing): Now, I believe you said that you never had an accident?

A. That's right.

Q. Do you recall an accident that you had at Kraft's Crossing at the Kraft Cheese Company?

A. I do.

Q. So you did have an accident?

A. Not to my fault.

Q. Well, I am not asking you that, I am asking you if you didn't have an accident?

A. Well, I guess that you could call it an accident.

Q. Well, there was damage to equipment, wasn't there? A. Slight, yes.

Q. When was that?

A. Well, it was early in the fall, shortly before we were laid off.

Q. Yes. Now, was it September or October, or November?

A. I couldn't say. It was either September or October, I don't know which.

Q. In 1941? A. That's right.

Q. And you had an accident to equipment there at the crossing, at the Kraft Cheese Company, which was just a few rods [548] from the refining company line? Isn't it?

(Testimony of John Evans.)

A. Well, I don't know where the line is. It was out on the highway after I crossed the railroad tracks.

Mr. Moyle: May I interrupt at this point. It has occurred to us several times during the hearing in connection with the location of things, that it might be helpful if the Examiner had a view of the premises. I don't know what your wishes are, but if you wish, we would be very glad to furnish transportation for you and the Board's attorneys at any time.

Trial Examiner Riemer: I may avail myself of that privilege before the hearing is over.

Read the last question and answer.

(Thereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Merrill, continuing): Now, the Kraft Cheese property joins the Idaho Refining Company property to the south, doesn't it?

A. Well, as I say, I couldn't say to that.

Q. Well, it is the first business property to the south of the Idaho Refining Company?

A. That's right.

Q. And you leave the Idaho Refining Company and you come by the Kraft Cheese Company?

A. Yes.

Q. Then you make the turn to the east and cross the railroad [549] track? A. Yes.

Q. Then you get onto the main highway?

(Testimony of John Evans.)

A. Yes.

Q. And the place where you enter the main highway is possibly 80 rods from the Refining Company property, isn't it? A. About that, yes.

Q. Now, you had your accident there when you got off onto the highway? A. Yes.

Q. Of what did it consist?

A. Broke the tongue out of the trailer.

Q. Then what happened? A. That's all.

Q. That held you up for some time?

A. About four hours, I think.

Q. Were there any accidents to other traffic that came along? A. No, sir; not to my knowledge.

Q. And that occurred in September or October?

A. Yes.

Q. Of 1941? A. Yes.

Q. Have you any other suggestions that you care to make touching that accident?

A. Yes. [550]

Q. What is it?

A. I would like to explain how it occurred.

Q. Yes, sir.

A. I would say that I left—that the truck had been serviced that night, and it had a lock on the fifth wheel, the pin that dropped through, and whoever greased or serviced the truck put this pin in there to back it out of the garage, and he left that pin in, and skidded the truck all over the yard taking it to the loading dock to load it, with the fifth wheel locked, and they loaded it that way, and

(Testimony of John Evans.)

spotted it out in the yard for me. I came out in the dark, in the night, and got in this truck, checked my tires and lights and water in the radiator and everything and got in the truck and drove out, and when I came to turn over the railroad track to come up this way towards town, the fifth wheel was locked and completely twisted the tongue out of the trailer.

Q. Couldn't you tell that the fifth wheel was locked when you were in the yard?

A. I thought something was wrong. I stopped twice by the Refinery office, and the Kraft Cheese Company, and went around with a flashlight, trying to find out what was the matter.

Q. Why couldn't you find out what was the matter?

A. Well, it just didn't show up in the dark with the flashlight. I knew it acted like something, the brakes were dragging or— [551]

Q. (Trial Examiner Riemer) What is a fifth wheel?

A. It is the turntable on the front wheels of a trailer, set on so it gives the front wheels room to turn.

Q. It has nothing to do with a separate wheel?

A. No.

Q. The fifth wheel is your descriptive term for that turntable which is in back of the truck proper and upon which the trailer rests?

A. You see, this was a four-wheel trailer. It

(Testimony of John Evans.)

is just the same principle as a wagon, to let the front wheels—it is a four-wheel trailer behind a truck.

Trial Examiner Riemer: I think I understand.

Q. (Mr. Merrill, continuing) You didn't go back to the garage for a mechanic when you thought something was wrong? A. No, sir.

Q. But just continued on?

A. That's right. There was no mechanic at the garage.

Q. None at the garage there?

A. No, sir; not at that time of the morning.

Q. Trial Examiner Riemer: What time was it?

A. About four o'clock in the morning.

Q. (Mr. Merrill) Did you look to see if there was a mechanic there?

A. Yes, I was in the garage before I left.

Q. You had another accident near here, too, didn't you, at [552] another time?

A. I don't remember.

Q. You don't remember, at the same crossing?

A. Oh, I had a truck jack-knife with me out there on the ice the winter before that.

Q. So that was the second accident you had?

A. Yes.

Q. That truck jack-knifed—what damage did that cause?

A. I think it broke an air line.

Q. What is an air line?

A. It is the line that connects the air from the truck to the trailer brakes.

(Testimony of John Evans.)

Q. That delayed you for some time?

A. No, sir.

Q. Was that in the daytime?

A. No, it was early in the evening.

Q. How early?

A. Oh, I would say about eight o'clock.

Q. So at least there were two accidents that you were involved in, that is to say, to equipment, when you were driving?

A. Yes, sir.

Q. Do you remember any more?

A. No.

Q. Now, when Mr. Henninger offered you re-employment at the plant on December 11, 1941, the rate of pay was 60 cents an hour, time and a half for overtime over 8 hours—over 40 [553] hours a week?

A. I don't know.

Q. You knew that was the basis of pay for labor in that type of service?

A. No, I didn't.

Q. Did you refuse the job without inquiring into that?

A. No, I didn't.

Q. Did you inquire into it?

A. Only Mr. Henninger told me that it would amount to \$25 a week. He didn't say about the hours.

Q. That was the basic pay?

A. Yes.

Q. You understood that it was time and a half for all hours over 40 hours per week?

A. No, that was the only way wages was discussed. I asked him how much, and he told me.

Q. You knew when you were working on the

(Testimony of John Evans.)

hourly basis with these trucks, you received a basic pay, basis of 40 hours a week, with time and a half for overtime over that? A. Yes, sir.

Q. And that was always the case?

A. On the trucks, yes.

Q. But you made no effort to make further inquiry from Mr. Henninger as to what pay it would really amount to? A. No. [554]

Q. You testified in regard to two accidents involving yourself—

Trial Examiner Riemer: I think that those have been sufficiently explained, Mr. Penfield, unless you have something else.

Mr. Penfield: Well, all right.

Q. (Mr. Penfield, continuing) Were any insurance claims paid on these accidents, if you know?

A. Of mine?

Q. Yes.

A. No, sir; not to my knowledge. [564]

Q. Did Mr. Henninger or anyone else connected with the company ever offer you a job as a truck-driver? A. No, sir.

Q. What was the job that they did offer you?

A. On the loading dock. [565]

Q. (Trial Examiner Riemer) Then with exception of Douglas, it is your testimony that all the truckdrivers were discharged on November 14?

A. With exception of Douglas and Patterson.

Q. Patterson having been previously discharged?

A. Yes.

(Testimony of John Evans.)

Q. And Whitesides having been previously discharged?

A. No, Whitesides was discharged on the 14th of November.

Q. He was discharged on the 14th of November?
[571]

A. That's right.

Q. Were there any truck drivers who were members of the Union who were not discharged, Mr. Evans?

A. No, sir.

Q. Mr. Evans, while you were employed by the Idaho Refining Company, did you as a truckdriver attend safety meetings?

A. Only one.

Q. Only one?

A. That's right.

Q. Do you, as a matter of personal knowledge, know whether the Company sponsored safety meetings for truck drivers?

A. Well, they had safety meetings, but it always happened that I was out of town.

Q. Did these meetings occur with any regularity?

A. No, they didn't.

Q. Was there any plan or practice for regular holding of safety meetings for truckdrivers?

A. There was not.

Q. You know of no such plan?

A. I know of no such arrangements, no. [572]

Q. Do you know James Taylor?

A. I know of them. I don't know them personally.

Q. Or Loren McBride?

(Testimony of John Evans.)

A. I know him, yes, sir.

Q. He was a member of your Union?

A. Not of our union.

Q. But of another Local?

A. Yes, over in Baker, Oregon.

Q. Frank Woodland?

A. I just know the name—

Q. Or Cliff Kauffman?

A. Yes, I know him.

Q. He was a member of the union?

A. Yes.

Q. None of those men were discharged that day?

A. They were not in this crowd.

Q. They were in what is known as the West End?

A. They were working for Mr. Stiff.

Q. They were working on the West End from Boise to the River, west?

A. I don't know what they called it.

Q. You know that they were working on the west end?

A. They were working in Baker, Oregon.

Q. That is where Wayne Douglas was working?

A. Yes. [578]

Q. Wayne Douglas, you say, was later discharged?

A. Yes.

Q. You know that he had a serious accident over at Weiser?

A. Yes.

Q. And that was after the 14th of November?

A. It was before the 14th of November?

(Testimony of John Evans.)

Q. Do you know when?

A. No, I couldn't say.

Mr. Penfield: Are you referring to the discharge or the accident?

Mr. Merrill: I am referring to the accident.

Q. (Mr. Merrill, continuing) Now, all these men whose names I have read—five—and Wayne Douglas, making six, were all union men?

A. Yes, sir.

Q. And none of them was discharged on the 14th of November, was he?

A. Not to my knowledge, no. [579]

WAYNE DOUGLAS

was thereupon called as a witness, and, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Riemer, Trial Examiner) State your name for the record, please?

A. Wayne Douglas.

Q. Where do you live?

A. Elko, Nevada.

Q. (Mr. Penfield) Where are you employed?

A. I drive for Cotant Truck Lines.

Trial Examiner Riemer: Will you try to speak as loudly as you can? It is very difficult to hear you, and if we don't get your answers, we have to ask you to repeat them and it takes up a lot of

(Testimony of Wayne Douglas.)

time and makes the record choppy, so keep your voice up, please.

Q. (Mr. Penfield, continuing) Have you ever worked for the Idaho Refining Company?

A. Yes.

Q. In what capacity?

A. As a driver. [582]

Q. When did you first commence work as a driver for the company?

A. Well, it was about, right around January 5 of 1940.

Q. How long did you continue?

A. I worked until about August—it was either August or September in 1940, then I was laid off.

Q. Why were you laid off?

A. Well, I wasn't 21 years old, and they came under the ICC or something, and they had to lay me off until I was 21.

Q. Were you ever re-employed?

A. Yes, in 1941—it was about the first of August in 1941.

Q. Was this after you had become 21?

A. Yes.

Q. How much after?

A. I was 21 on April 13, 1941.

Q. Who hired you when you first went to work for the Company? A. Kermit Rice.

Q. Who hired you after you went back the second time? A. Kermit Rice.

(Testimony of Wayne Douglas.)

Q. After you commenced work in August, 1941, did you work out of Pocatello?

A. No, I worked out of Baker, Oregon.

Q. Did you work at all out of Pocatello at the time that you commenced work?

A. Not when I first started, no. [583]

Q. Under whom did you work in Baker, Oregon?

A. Earl Stiff, he was the truck foreman over there.

Q. Who was Earl Stiff?

A. He has some service stations over there, and he has some trucks of his own, or did have, I don't know how it was, and he took care of the Idaho Refiners that was over there.

Q. Do you mean that he handled oil for the Idaho Refining Company?

A. Well, I don't know anything about how their dealings was.

Q. Did he have his own trucks?

A. I know at one time they were his. I don't know whether they were then or not.

Q. Did he operate any trucks that were owned by the Idaho Refining Company?

A. Well, he took care of that one truck over there of the Idaho Refiners.

Q. You know that there was one truck owned by the Idaho Refining Company there?

A. Yes.

(Testimony of Wayne Douglas.)

Q. Did you drive that truck? A. Yes.
[584]

Q. What was the date of your discharge?

A. Well, I don't know whether you would call it discharged, when I came back from Baker or when I got here.

Q. When did you terminate your employment?

A. It was about the 24th of October—or November.

Q. The 24th—— A. ——of November.

Q. You are not sure of that date?

A. No, I am not sure.

Q. Could it have been the 26th?

A. It could be.

Q. Between the date you commenced work for the company for the second time, and the date of the termination of your employment, did you work continuously out of Baker in the manner you have just described?

A. No, I was back over at Pocatello, once.

Q. When was that?

A. Well, I believe that it was in September some time.

Q. In September? [589]

A. I believe it was. I am not sure of that, either.

Q. The first or latter part of September?

A. Well, I don't know whether it was the first or the last.

Q. What is your best recollection?

(Testimony of Wayne Douglas.)

A. I am pretty sure that it was in September, that's all; I don't know when.

Q. How long did you work in Pocatello?

A. Well, two or three weeks, then I went back.

Q. And during this two or three weeks, were you doing the same sort of work that the other drivers were?

A. At the same as the other drivers in Pocatello.

Q. You were getting your assignments from the Refinery out here? A. Yes.

Q. Were you driving the same truck as you were driving in Baker?

A. I was driving it, and the other crew were, too.

Q. Who brought this truck down?

A. I brought it to Boise, and Johnny Evans brought it from Boise to Pocatello.

Q. At whose instructions did you come to Pocatello?

A. Well, I believe Earl Stiff told me to come to Pocatello.

Q. Now, when you came to Pocatello, whom did you work under? A. Kermit Rice.

Q. Did you ever join Local 440 of the Teamsters? [590] A. Yes.

Q. I show you Board's Exhibit 5-F and ask you if you can tell me what that is?

A. That is an application blank for the Teamsters' Union 440

(Testimony of Wayne Douglas.)

Q. Is that your signature on it?

A. Yes, sir.

Q. It is dated 9-29-41, is that the date on which you signed it? A. Yes.

Q. At that time, were you driving here at the Pocatello Refinery? A. Yes.

Q. You testified that you drove for the Pocatello Refinery about three weeks some time in September.

What happened at the conclusion of that period?

A. Well, the truck went back to Baker, and I got to go back with the truck.

Q. Who told you to go back to Baker?

A. Well, the way it happened, I went to Boise, and when I got to Boise, Dick Sheppard told me to go on to Baker.

Q. Who is Dick Sheppard?

A. He is the Manager of the Idaho Gas & Oil Company at Boise.

Q. Trial Examiner Riemer) When was this, please?

Q. (Trial Examiner Riemer) When was this, [591]

A. It must have been right around the first of October.

Q. After that, you returned to Baker, did you?

A. Yes.

Q. Did you continue working as before?

A. The same as before, yes.

Q. This truck that you drove down to the Idaho

(Testimony of Wayne Douglas.)

Refining Company, or that was driven down partly by you, and that you returned, was that the same truck that you had been driving under Mr. Stiff?

A. Yes.

Q. During the time that you were employed by the Idaho Refining Company this second time, did you ever have an accident? A. Yes.

Q. When did this accident occur?

A. It was in October. I am not sure of the date.

Q. Where did it occur?

A. Weiser, Idaho.

Trial Examiner Riemer: This is 1941?

Mr. Penfield: Yes.

Q. (Mr. Penfield, continuing) At Weiser, Idaho? A. Yes.

Q. How did this accident occur?

A. Well, I was just leaving town and there was a square corner there and I got wound up, you know, was going too fast, and [592] turned over.

Q. How badly was the truck damaged?

A. Well, I wouldn't know in money, but the cab was gone and the tank was bent up pretty bad.

Q. Did you continue working for the company after that? A. Yes.

Q. Were you suspended?

A. Well, I wasn't suspended, but I was off for a week or ten days while the truck was being fixed.

Q. Did you resume work as soon as the truck was fixed? A. Yes.

(Testimony of Wayne Douglas.)

Q. Driving that same truck? A. Yes.

Q. Did you continue to drive out of Baker?

A. Yes.

Q. Whom did you report the accident to?

A. Earl Stiff.

Q. Was anything said to you by him?

A. Well, they asked me how it happened, and I told them. Mr. Moyle was there, too.

Q. (Trial Examiner Riemer) Which one?

A. Gil.

Q. (Mr. Penfield, continuing) Did anyone connected with the company threaten you with discharge at that time? A. No. [593]

Q. Did they criticize you?

A. Well, I don't know whether you could call it criticizing or not. I guess I had a lot of it coming.

Q. (Trial Examiner Riemer) What?

A. I guess I had a lot of criticizing coming, but I don't believe that they did.

Q. (Trial Examiner Riemer) But you don't believe they gave it to you? In other words, the witness expected more than he got.

Q. (Mr. Penfield, continuing) Did you hear anything about the drivers at Pocatello being discharged? A. Yes.

Q. When did you hear this?

A. Well, it was, I believe, about the 16th of November, I think that it was, or the 17th, somewhere around there, 1941.

(Testimony of Wayne Douglas.)

Q. Who told you? A. Roy Williams.

Q. Who is Roy Williams?

A. He worked on the—there at the bulk plant at Boise, Idaho, for the Idaho Gas & Oil Co.

Q. You state this was the 16th or 17th of November after the drivers had been discharged?

A. Well, it must have been, or I wouldn't have heard it.

Q. You were still driving for Earl Stiff at that time? A. Yes.

Q. Following that, did you hear anything in connection with [594] your own discharge?

A. Well, I didn't hear anything until I think November 20. Dick Sheppard called Mrs. Stiff, and she was the secretary for Earl, and told her not to let me pull any more trips and not to ask any questions.

Trial Examiner Riemer: Would you read that last question and answer, please?

(Last question and answer read by reporter.)

Mr. Moyle: We move to strike what Mr. Sheppard told Mrs. Stiff as hearsay.

Q. (Mr. Penfield, continuing) Well, will you tell us what Mrs. Stiff told you?

Mr. Moyle: May that go out?

Trial Examiner Riemer: Are you consenting to have the previous answer stricken?

Mr. Penfield: No.

Trial Examiner Riemer: The motion to strike

(Testimony of Wayne Douglas.)

is denied. I will entertain it again unless it is connected.

Q. (Mr. Penfield, continuing) Will you tell us what Mrs. Stiff told you?

A. She said for me not to pull any more trips, and not to ask any questions.

Q. Did she tell you that you were discharged?

A. No.

Q. Were you told to report to Pocatello? [595]

A. I wasn't told anything.

Q. You were told not to make any more trips?

A. Yes.

Q. What did you do?

A. Then I went to Pocatello.

Q. When did you go to Pocatello?

A. Well, about the 21 or 22 of November, right after that.

Q. What did you do when you got to Pocatello?

A. Well, I went out to the Refinery and saw Mr. Moyle.

Q. Did you see anyone else?

A. Mr. Copening.

Q. Where did you see Mr. Moyle and Mr. Copening? A. In their office.

Q. What discussion took place?

A. Well, they said that I was fired for the same reason as the rest of the drivers were, on account of the insurance was cancelled.

Q. Were any of the drivers that you have re-

(Testimony of Wayne Douglas.)

ferred to at Baker [596] members of the Teamsters? A. Yes, I believe that they all were.

Q. Were any of them members of Local 440?

A. No.

Q. Were you the only member of Local 440?

A. The only one.

Q. Were these other men discharged?

A. No. [597]

Cross Examination

Q. You belonged to the Teamsters Union before you joined 440, did you not?

A. I had never been in the Union before that.

Q. That was your first union experience?

A. I made application, but was never in the union.

Q. What union did you make application in?

A. It was in the Railway.

Q. Didn't you make application somewhere near Baker or in the Baker territory? A. No.

Q. So that while you were driving in and out of Baker, you did not belong to the Union the first time? A. No.

Q. When you were under age?

A. I was of age then.

Mr. Penfield: He never testified that he was driving out of Baker when he was under age.

Mr. Moyle: I beg your pardon. [599]

Q. (Mr. Moyle, continuing) You drove out of Pocatello when you were under age? A. Yes.

Q. And your right age came out during the first draft, didn't it? A. Yes.

(Testimony of Wayne Douglas.)

Q. You didn't register because you were under age? A. No.

Q. And so far as the seriousness of your accident was concerned, were you loaded or unloaded when it occurred? A. Loaded.

Q. Just what happened to the equipment and its cargo?

A. Well, the equipment was—well, the cab was gone off the truck and the tank was bent up quite a bit and the gas was all gone except I believe it was 250 gallons.

Q. Well, how much gas did you have on it?

A. 4640 gallons.

Q. When you say Mr. Moyle and Mr. Copening in the company office on November 21 or 22, they discussed with you at that time the amount of the loss? A. No.

Q. Incident to the Weiser accident?

A. No.

Q. And the seriousness of it? A. No.
[600]

Q. And the amount the insurance company had had to pay out? A. No.

Q. And that it was because of this insurance loss that you were discharged?

A. Well, they told me that the reason that I was discharged was the same as the other drivers.

Q. Didn't they also tell you that it was because of the loss that you had had at Weiser?

A. No.

Q. They didn't mention that at all?

(Testimony of Wayne Douglas.)

A. No.

Q. And that is why you say you received no criticism for that accident?

Mr. Penfield: He didn't testify that he received no criticism.

Q. (Mr. Moyle, continuing) Well, substantially no criticism, not as much criticism as he deserved.

A. I didn't get any criticism at all up there.

Q. But you were discharged on November 21 because of the insurance?

A. I was discharged for the same reason that the other drivers were.

Q. So, after you had come all the way down from Baker to Pocatello and gone into Mr. Moyle's and Mr. Copening's office, what did you say when you went into the office?

A. Well, what I went in for was my check. [601]

Q. Did you say anything?

A. Well, I talked to them.

Q. What did you say?

A. Well, I asked them what it was all about.

Q. Who spoke, Mr. Moyle or Mr. Copening?

A. Mr. Moyle had a telegram there from the insurance company and he showed me the telegram.

Q. That's what I thought..

A. It said that they cancelled the insurance.

Q. He showed you the telegram cancelling the insurance?

(Testimony of Wayne Douglas.)

A. That the insurance on all the trucks was cancelled.

Q. What else did he say to you?

A. Well, that's just all there was of it.

Q. What did you say when you saw the telegram? A. There wasn't much I could say.

Q. Well, I am asking, did you say anything?

A. Well, no, I just asked for my money.

Q. You said merely "Give me my money", and your check was given you and you walked out?

A. No, they said all the time cards wasn't there, and they would have to wait until the time cards got in from Baker to pay me.

Q. And you continued on the payroll until the cards came in?

A. I wasn't making anything.

Q. I see. Well, you didn't get your check until the 26th? [602]

A. It could be the 25th or 26th, somewhere in there.

Q. You weren't paid for any time between the 10th and the 25th?

A. I wasn't paid for any time between the 20th and the 25th.

Q. Oh, it was the 20th when Mrs. Stiff told you that you were to take no more trips?

A. Yes.

Q. Now, Mr. Copening said nothing to you on that occasion?

A. Well, if he did, it was just backing up what Mr. Moyle said.

(Testimony of Wayne Douglas.)

Q. Did he say anything to you?

A. I don't remember.

Q. As far as you remember, Mr. Moyle did all the talking? A. Yes.

Q. And you have now related all of the conversation, the substance of it, as far as you can remember it? A. Yes.

Q. And during this entire conversation with you in that office there was never any mention made by anybody, either you or Mr. Copening or Mr. Moyle about this Weiser accident? A. No.

Q. That is, there was not a word said about it?

A. No.

Q. Now, at that time, at this meeting with Mr. Moyle and Mr. Copening, there was nobody else present?

A. No. I saw John Peterson on the way out.

Q. I mean in the office? [603] A. No.

Q. Whose office was this, Mr. Moyle's, or Mr. Copening's? A. Mr. Moyle's.

Q. When you came to the refinery that morning, you walked right in and saw them?

A. I stood at the desk and she called him. I don't believe I saw him right then. I had to wait a while.

Q. How long did you wait?

A. Oh, possibly an hour.

Q. Then you went in and saw Mr. Moyle and Mr. Copening? A. Yes.

Q. And during that conversation, Mr. Moyle

(Testimony of Wayne Douglas.)

didn't mention the discharge of any other drivers, did he, at all?

A. Well, the telegram said that our insurance was cancelled, so that would naturally be all of us.

Q. But as far as Mr. Moyle's conversation with you was concerned, he didn't say anything to you about any other drivers, isn't that the fact?

A. Well, we didn't talk about the other drivers.

Q. Well, there wasn't anything said in that conversation about any other drivers, was there?

A. There was nothing said, but it was on the telegram.

Q. I see, so the only thing that you saw, or that was said to you, was concerning this telegram?

A. The only thing that was said to me was concerning me, that [604] I was discharged on account of the insurance company.

Q. On account of that telegram.

A. Because the insurance was cancelled.

Q. There was nothing said by anybody about any other drivers? A. None in particular.

Trial Examiner Riemer: Anything further?

Mr. Moyle: No. I think that is all.

Redirect Examination

Q. (Mr. Penfield) You have testified that Mr. Moyle and Mr. Copening informed you that you were being discharged because of the cancellation of the insurance, is that correct? A. Yes.

Q. And you testified that they showed you a telegram? A. Yes.

(Testimony of Wayne Douglas.)

Q. Do you recall when that telegram was dated?

A. Well, I believe that it was November 13 or right there some place. I am not positive of that.

Mr. Penfield: Counsel, can you produce a copy of the telegram?

Mr. Moyle: We have the original at the refinery. I will produce it as a part of our case, or sooner, if it is desired.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Penfield, continuing) I show you a document which purports to be a copy of a Western Union telegram and ask you if you can identify that? [605]

A. Yes, I believe that is the same copy.

Q. Is that the copy which was shown you by Mr. Moyle and Mr. Copening? A. Yes.

Mr. Moyle: I would like to say for the sake of the record that there can't be any issue to it. There is only one wire of this kind.

Q. (Mr. Penfield, continuing) Does any date appear on that? A. Yes, November 17.

Q. Does the date of sending appear?

Mr. Moyle: The telegram speaks for itself. I don't know the purpose of the examination, but the telegram speaks for itself.

A. No, there is no date on it.

Mr. Penfield: I just want to get into the record the date of sending.

Trial Examiner Riemer: What is the date?

(Testimony of Wayne Douglas.)

Q. (Mr. Penfield, continuing) What does that say?

A. Oh, "Salt Lake City Utah", November 10. That would be the date.

Trial Examiner Riemer: There is too much talk. Identify this thing, move its admission, and let's get on.

Mr. Penfield: Well, I will offer this as Board's Exhibit 22.

Trial Examiner Riemer: Do you have any objection?

Mr. Moyle: No, there is no objection. [606]

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit 22.

(Whereupon the document hereinabove referred to was marked and admitted as Board's Exhibit 22.)

BOARD'S EXHIBIT No. 22

WESTERN UNION TELEGRAM

WUB30 49 7 Extra D1—

Salt Lake City Utah Nov 10 448P

Idaho Refining Co—

Due to High Loss Ratio Experienced on Equipment Owned by Your Corporation for Past Few Years We Are Cancelling Off Policy FM 227 By Registered Cancellation Notice To Be Effective No-

(Testimony of Wayne Douglas.)

vember 17. 1941, Noon Standard Time. Please
Make Other Arrangements For Insurance—

Firemens Insurance Co of New-
ark New Jersey and Metropoli-
tan Casualty Co of New York
New York.

FM 227 17 1941. 518P S30WUB WUB 30

Q. (Trial Examiner Riemer) Do you know
how other truckdrivers at Baker, Oregon, were
paid? A. By check.

Q. Whose check was it?

A. Idaho Refining Company.

Q. How do you know that? How do you know
that they were checks of the Idaho Refining Com-
pany? A. They got the same checks I did.

Q. Did you see them? A. Yes.

Q. Were these men paid at the same time you
were paid? A. Yes.

Trial Examiner Riemer: Thank you. Is the
witness excused? You may step down.

(Witness excused.)

Mr. Penfield: I will call Mr. Heckert.

ARTHUR LEROY HECKERT

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name, please. [607]

The Witness: Arthur LeRoy Heckert.

Q. (Trial Examiner Riemer): Where do you live? A. Pocatello, Idaho.

Direct Examination

By Mr. Penfield:

Q. Where are you employed, Mr. Heckert?

A. I am employed in the Ordinance Plant of the United States Navy.

Q. In what capacity? A. Truckdriver.

Q. Did you ever work for the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truckdriver.

Q. When did you commence work for the company? A. February 27, 1940.

Q. When was your employment terminated?

A. November 14, 1941.

Q. Who hired you? A. Mr. Arch Webb.

Q. Who is Mr. Webb?

A. He was assistant superintendent, I believe, of the Refinery.

Q. Prior to being hired, did you make any test run? A. Yes.

Q. With whom? A. Kermit Rice. [608]

Q. Who is Mr. Rice? A. Truck foreman.

(Testimony of Arthur Leroy Heckert.)

Q. During that test run, did you have any conversation with Mr. Rice? A. Yes.

Q. What was this conversation?

A. Well, he asked me if I belonged to any union, and I says "No", and he says, "Well, that is okeh." He said, "Mr. Moyle is strictly against union."

Q. How long was that test run?

A. It was about eight miles, six or eight miles.

Q. Six or eight miles from where?

A. We went from the refinery out to the airport and back to the refinery.

Q. And after you got back to the refinery, what did you do?

A. I went back into the office, and Mr. Webb gave me an application blank to fill out.

Q. When did you go to work?

A. As near as I can remember, about three or four weeks later.

Q. Do you know how it happened that you did not go to work immediately?

A. Mr. Rice said he didn't need any drivers right then, but as soon as they did, I would get a job he was sure.

Q. Did you receive a call from Mr. Rice?

A. Mr. Webb.

Q. That was about three or four weeks later?

[609]

A. Yes.

Q. And your testimony was that you went to work on what day?

A. About the 27th of February, 1941.

(Testimony of Arthur Leroy Heckert.)

Q. Then your conversation with Mr. Rice on the test run was three or four weeks earlier than that?

A. Yes.

Q. During the time that you were employed by the Company, were you a member of the Idaho Refining Company Benefit and Labor Association?

A. Yes, sir.

Q. At the time that you commenced work for the company, were you a member of any labor organization? A. No.

Q. Aside from the Association, did you ever join any other labor organization while you were working for the company? A. Yes, sir.

Q. What organization was that?

A. Teamster's Union, Local 440.

Q. I show you Board's Exhibit 5-K, and ask if you can tell us what it is?

A. That is an application blank of the International Brotherhood of Teamsters, Chauffeurs, Stablenen & Helpers.

Q. Is the name of the Local given?

A. Yes, sir, No. 440.

Q. Is that your signature which appears on there? [610] A. Yes, sir.

Q. When did you sign this application blank?

A. I believe it was on the 29th.

Q. Where did you sign it?

A. In Mr. Rosqvist's house.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

(Testimony of Arthur Leroy Heckert.)

Q. (Mr. Penfield): Who else was present at Mr. Rosqvist's house?

A. Mr. Burkholder and Mr. Patterson.

Q. Did they both sign application cards?

A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. Did you have a trip scheduled on November 13, 1941? A. Yes, sir.

Q. What was that trip?

A. It was a trip to Ogden, Utah.

Q. What time were you supposed to leave?

A. I was supposed to leave about 10:00 or 11:00.

Q. Is that a.m. or p.m.? A. P.M.

Q. What date? A. The 15th.

Q. Was this trip posted? A. Yes. [611]

Q. Did you see it on the board? A. Yes.

Q. Was that at the loading dock?

A. Yes, sir.

Q. What time did you see it?

A. It was about 10:00 o'clock.

Q. In the evening? A. Yes, sir.

Q. Had you been called out to the plant?

A. That's right.

Q. Who had called you?

A. I believe Heber Sheets,—Heber Sheets called me.

Q. Who was Heber Sheets?

A. He was working on the loading dock at that time.

Q. Did you make this trip? A. Yes, sir.

Q. What time did you leave?

(Testimony of Arthur Leroy Heckert.)

A. As near as I can remember, about 11:00 o'clock.

Q. On the evening of November 13?

A. Yes, sir.

Q. When did you arrive in Ogden?

A. I arrived in Ogden about five o'clock on the morning of the 14th.

Q. How did you get back from Ogden?

A. Deadheaded back with Vic Ellingford. [612]

Q. What do you mean by deadheading back?

A. Well, the evening before there was a notice on the board for I and the other extra driver in Ogden to deadhead back with Vic Ellingford. He was scheduled to bring the truck back.

Q. Is that the only thing that the notice said?

A. Yes.

Q. Was any reason given for your deadheading back?

A. No, sir.

Q. Where was Vic Ellingford?

A. In Ogden.

Q. That was on the evening of the 13th?

A. Yes, sir.

Q. Had he received any instructions?

A. No, sir.

Q. Did you convey any instructions to him?

A. Only that I and this other driver were to deadhead back with him.

Q. Who was the other driver?

A. Hank Hendrickson.

Q. Did the three of you come back in a single truck?

A. Yes.

(Testimony of Arthur Leroy Heckert.)

Q. What time did you get to the plant?

A. About 9:00 p.m. the evening of the 14th.

Q. Whom did you see?

A. Spike Henninger. [613]

Q. What were you told?

A. He told us that Mr. Copening would like to see us in the office.

Q. He told that to the three of you?

A. Yes.

Q. Is that all? A. That is all.

Q. Did you go to the office? A. Yes, sir.

Q. Did you see Mr. Copening? A. Yes, sir.

Q. What did he say?

A. He showed us the telegram.

Q. By that telegram, you mean Board's Exhibit 22?

A. That's it.

Q. And did he say anything else?

A. He says, "Due to that," he says, "I am sorry, but I guess I will have to let all you fellows go."

Q. Did you get your check? A. No, sir.

Q. When did you get your check?

A. The next day about noon.

Q. Prior to your conversation with Mr. Copening, had you ever heard that the Company's insurance was to be cancelled?

A. No, sir. [614]

Q. During the time that you worked for the company, did you ever have an accident?

A. No, sir.

Mr. Penfield: No further questions.

Trial Examiner Riemer: Off the record.

[(Testimony of Arthur Leroy Heckert.)

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Cross Examination

By Mr. Merrill:

Q. Mr. Heckert, at the time that you went into Mr. Copening's office, at which time you say that he showed you the telegram, was Mr. Gilbert Moyle there?

A. He was in one of the offices there, but he wasn't in Mr. Copening's office.

Q. Did you talk to anybody other than Mr. Copening? A. No, sir.

Q. Have you ever been told by anybody of the Refining Company about carefulness in driving?

A. No, sir.

Q. Hadn't you been in the group that had been warned about carefulness in driving?

A. No, sir.

Q. Hadn't you been in the group that had been warned about having continued accidents?

A. I attended one meeting where they cautioned all the drivers to be careful. [615]

Q. Who cautioned them? A. Kermit Rice.

Q. Kermit Rice? A. Yes, sir.

Q. How many drivers were there?

A. I couldn't say. I don't remember.

Q. When was that meeting?

A. I couldn't say to that.

Q. Could you give us an idea? A. No, sir.

(Testimony of Arthur Leroy Heckert.)

Q. And Kermit Rice discussed the accidents that had occurred then, did he not?

A. No, sir. He said that they wanted to try for that Safety Award.

Q. Do you remember ever having a meeting with any of the drivers where Kermit Rice told you about the serious accidents that had occurred and suggested that they had to stop?

Mr. Leicht: He has answered that.

Mr. Merrill: I am asking about another occasion.

A. No.

Trial Examiner Riemer: Overruled.

Q. (Mr. Merrill, continuing): You don't recall any such occasion? A. No.

Q. Do you know of meetings that were held when you were not [616] there? A. Yes.

Q. So you know that they had had meetings with Kermit Rice when you were not present?

A. Yes.

Q. How long before the 14th of November did such meetings occur, if you know?

A. I don't know.

Q. Other drivers had suggested to you that they had been cautioned, had they not? A. Yes, sir.

Q. And told you that they had been cautioned individually and at meetings?

A. No, not individually,—at meetings.

Q. At meetings at which you were not present?

A. Yes.

Q. And they had been told that the insurance might be cancelled if these accidents didn't stop?

(Testimony of Arthur Leroy Heckert.)

A. No, sir. I don't ever remember of hearing that statement.

Q. But you do remember of other drivers telling you that they had been in meetings with Mr. Rice where he told them that the accidents would have to stop?

A. No, sir; they told me that he cautioned them to be more careful.

Q. Were those meetings more than one? [617]

A. I couldn't say. I believe that they were.

Q. And the truckdrivers had told you that on more occasions than one, also, had they not?

A. Well, more than one truckdriver told me, I remember that.

Q. That is what I mean. More than one truckdriver had told you that? A. Yes, sir.

Q. When did you become a member of the Association? By that, I mean the Labor Association out at the company?

A. It was in the early spring of 1940.

Q. That was some time after you had commenced working? A. Yes, sir.

Q. Then I believe that you say you joined the Teamsters Union sometime in the fall of 1941?

A. Yes, sir.

Q. When you went to Mr. Rosqvist's house, who went with you?

A. Mr. Burkholder and Mr. Patterson.

Q. Was Mr. Archibald there? A. No, sir.

Q. Did he go with you? A. No, sir.

(Testimony of Arthur Leroy Heckert.)

Q. Had he suggested that you go?

A. No, sir.

Q. He hadn't had anything to do with your going whatever? A. No, sir. [618]

Q. He didn't give you any blanks?

A. No, sir.

Q. Nor accept any money from you?

A. No, sir.

Q. Do you know whether or not that was true also of Burkholder and Patterson?

A. I believe that it was.

Q. That is to say that Mr. Archibald had not said anything to them about joining the union? Let me put it a little more clearly.

Do you know whether or not Mr. Archibald had said anything to Burkholder or Patterson about joining the Union?

A. To that, I can't say. I don't know.

Q. They never mentioned it to you if he did?

A. No.

Q. Do you know whether or not they had application blanks when they went there, or did they get their application blanks in Mr. Rosqvist's house?

A. It seems that they got them at Rosqvist's house. [619]

Q. Where did you go on your student run?

A. To the airport.

Q. And back? [621] A. Yes, sir.

Q. How far was that?

A. I would say six or eight miles.

(Testimony of Arthur Leroy Heckert.)

Q. And had you ever met Mr. Rice before that time? A. No, sir.

Q. What date did you say that was?

A. It must have been around the last of January, sometime. I don't remember the date.

Q. 1940? A. Yes, sir.

Q. You said something about Mr. Rice asking you if you belonged to any union?

A. Yes, sir.

Q. And what did you tell him?

A. I told him "no".

Q. How did that conversation come up?

A. He just asked me out of the clear blue sky.

Q. What had you been talking about before?

A. Nothing in particular that I remember.

Q. Nothing?

A. No, sir.

Q. You say that his comment was that "Mr. Moyle is strictly against any union"?

A. "Strictly against union," that's all he said.

Q. "Strictly against union"? [622]

A. Yes.

Q. And that's all he said?

A. That's all he said.

Q. There was no other comment made about it?

A. No, sir.

Q. Well, are you sure Mr. Rice said that to you?

A. Yes, sir.

Q. You have no doubt about that?

A. No doubt.

(Testimony of Arthur Leroy Heckert.)

Q. Was it when you were going or coming back? A. We were coming back.

Q. How near were you to the plant?

A. We were just pulling into the plant. [623]

Redirect Examination

By Mr. Penfield:

Q. During this conversation with Mr. Rice that you refer to, was anything said about the company hiring union men?

A. That was all that I can remember of it, he said that they were strictly against union.

Q. Did you ever pay any part of your initiation fee to Mr. [624] Archibald? A. Yes.

Q. All of it? A. No, \$6.25.

Q. Do you recall when that was?

A. No. It was several days later—it was on the 6th of October, I believe.

Q. That was after you had signed the application blank? A. Yes.

Q. How did you happen to pay it to Mr. Archibald?

A. Because I could never catch Mr. Rosqvist in, when I was in, and I was always out on a run in the daytime, it seemed like.

Q. Had you been informed that Mr. Archibald was collecting initiation fees?

A. No, sir. I asked him if he would take it in for me, and he said that he would. [625]

Mr. Moyle: May the record show that we have substituted the original of what has heretofore been

(Testimony of Arthur Leroy Heckert.)

marked as Board's Exhibit 22, in lieu of the copy heretofore received.

Trial Examiner Riemer: Thank you. Mr. Reporter mark the original telegram in evidence now as Board's Exhibit 22, substituting it for the copy heretofore marked.

Mr. Penfield: We can use the copy as a duplicate exhibit. I will call Mr. Moss.

TREVOR MOSS

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name.

The Witness: Trevor Moss.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Trial Examiner Riemer: I am going to caution you as I have other witnesses, to speak as loudly as you can. Were you here this morning?

The Witness: For a while.

Trial Examiner Riemer: Could you hear the other witnesses testify? [627]

The Witness: Not very well.

Trial Examiner Riemer: You see the difficulty it causes us.

Direct Examination

Q. (Mr. Penfield) Are you employed at the present time, Mr. Moss?

(Testimony of Trevor Moss.)

A. No, sir.

Q. Were you ever employed by the Idaho Refining Company?

A. Yes.

Q. In what capacity?

A. As a transport driver.

Q. When were you first employed?

A. November 16, 1941.

Q. When did you terminate your employment with the Idaho Refining Company?

A. February, 3, 1942.

Q. What experience had you had as a truck driver prior to working for the Idaho Refining Company?

A. Approximately five years.

Q. Had you ever had any experience driving oil trucks?

A. Very little, prior to that time.

Q. What had your experience consisted of?

A. Mostly driving dump trucks.

Q. On what date did you first ask the company for a job?

A. Last November 15th on a Saturday, I believe.

Q. With whom did you talk? [628]

A. Mr. Rice, the truck foreman.

Q. Did you know Mr. Rice, or had you been referred to him?

A. I didn't know him, no, but someone pointed him out to me. That is, told me who he was.

Q. Had you heard that there were jobs open at the refinery?

(Testimony of Trevor Moss.)

A. Yes.

Q. Where did you see Mr. Rice?

A. I saw him right out at the plant.

Q. At what time?

A. Well, that was sometime in the afternoon, I don't remember the exact time.

Q. Saturday afternoon?

A. Yes.

Q. What conversation did you have with Mr. Rice?

A. I asked Mr. Rice if he was the truck foreman—no, first I asked him if he was hiring any drivers, and he said that he had been hiring a few, and I asked him if there was any chance to go to work, and he wanted my name and address, then he asked what experience I had had and I told him, and he said. "Stick around a while, and I will take you for a ride."

Q. Did you go for a ride?

A. Well, yes, a little later, but I didn't go with Mr. Rice. I went with one of the mechanics—Brown, I think was his name.

Q. With whom? [629] A. Mr. Brown.

Q. About what time was this?

A. Well, this was pretty late in the afternoon—I would say it was around five o'clock.

Q. Was this a student run?

A. Well, yes. Just more or less trying us out to see if we could handle the truck, I presume.

Q. Where did you go?

A. Well, we went up to the local airport about

(Testimony of Trevor Moss.)

four and one-half or five miles, up there and back.

Q. What happened on your return?

A. He sent us over to the office—Mr. Brown did.

Q. You said “He sent us”—who was with you?

A. My brother.

Q. Did he go on the run with you?

A. No, he took a separate run after I came in.

Q. You both went over to the office together then?

A. Yes.

Q. Who were present?

A. There was Mr. Moyle, Mr. Copening, and Mr. Rice.

Q. What conversation did you have with them?

Trial Examiner Riemer: Let’s identify the Moyle, please.

Q. (Mr. Penfield, continuing) Which Mr. Moyle was that?

A. Well, he was the one that is president of the company out there. [630]

Q. Mr. Gilbert Moyle? A. Yes.

Q. What conversation did you have?

A. Well, Mr. Rice introduced me to Mr. Moyle, and Mr. Copening, then we sat down and he asked me if I belonged to any union.

Q. (Trial Examiner Riemer) Who did?

A. Mr. Moyle did, and I told him “no”; then he says, “We have our own union and own organization out here in the company” and he said, “We were free to join any time that we wanted to.”

(Testimony of Trevor Moss.)

Q. Did he say anything about any outside organizations?

A. Well, he said that they didn't belong to any union and didn't intend to.

Q. Can you recall anything else that was said?

A. Well, outside of, he asked my driving experience, and I told him that, about the same thing that Mr. Rice asked me.

Q. When did you commence driving?

A. That was Monday morning, the 17th, I went to Salt Lake. [631]

Cross Examination

Q. (Mr. Merrill) Where were you living at the time that you made application for employment to the Idaho Refining Company?

A. Garland, Utah.

Q. Did you come up here for the purpose of making that application?

A. No, I came up to see my folks.

Q. What were you doing down there?

A. Driving truck for Olaf Nelson Construction Company.

Q. Then you worked for the Idaho Refining Company how long?

A. From the 16th of November to the 3rd of February.

Q. Why did you discontinue?

A. I went to sleep and ran off in the ditch, and they fired me. [635]

Q. Isn't it a fact that what they asked you there in the office was whether or not you belonged—what

(Testimony of Trevor Moss.)

Lodge you belonged to, and what church you belonged to, what fraternal associations, isn't that what they asked you? [638]

A. No, I wouldn't say that it was asked that way. He asked me if I belonged to any union, and I told him "no". That is what I was asked if I belonged to.

Q. What else were you asked in that respect?

A. I wasn't asked anything else in that respect.

Q. You were not told that you could not belong to a union?

A. No, I wasn't told that.

Q. Mr. Moyle, you say, merely said that there was a union in the company that you could belong to?

A. Well, they had their own organization in the company there that I could belong to any time I wanted to.

Q. But at no time in that conversation did Mr. Moyle or anyone else tell you that you could not belong to any other union?

A. Well, they didn't tell me that, but I gathered from the tone——

Q. What was said that caused you to gather from it, is what I want to know.

A. Well, just on the first question asked, if I belonged to any union.

Q. Is it that upon which you base your thought that you should not belong to any union, merely because they asked that?

A. Well, why should a company ask that?

(Testimony of Trevor Moss.)

Q. That isn't what I asked you.

A. Well, maybe I had the wrong attitude, but that is the way [639] that I felt about it.

Q. So then the only thing that you say Mr. Moyle said, or anyone else there in that conversation, was to ask you if you belonged to a union, and you said "no", then he said that there was an organization or a union there that you could belong to?

A. Yes, in their own company.

Q. In their own company? A. Yes.

Q. And that was all that was said about that subject?

A. Outside of the fact that they mentioned that they didn't belong to any union and didn't intend to.

Q. Whom do you mean by "they"?

A. Well, Mr. Moyle.

Q. Well, you understood, of course, that Mr. Moyle would not be eligible to join a union?

A. Well, I don't know nothing about the union. That is nothing to me. [640]

MERLIN BOWMAN

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name for the record, please, Mr. Bowman.

The Witness: Merlin Bowman.

(Testimony of Merlin Bowman.)

Trial Examiner Riemer: Will you keep your voice up—where do you live?

The Witness: Pocatello.

Direct Examination

Q. (Mr. Penfield) Where are you employed at the present time, Mr. Bowman?

A. At the Gun Plant—Morrison-Knudson.

Q. Will you speak up, please?

A. At the Gun Plant.

Q. Here in Pocatello?

A. Yes, sir.

Q. In what capacity?

A. I am driving a Euclid Truck. [645]

Q. Did you ever work for the Idaho Refining Company?

A. Yes, sir.

Q. In what capacity?

A. Truck driver.

Q. When did you commence work for the company?

A. Well, I don't remember for sure whether it was the 16th or 17th of November, I believe.

Q. Whom did you ask for the job?

A. Kermit Rice.

Q. Where did you see him?

A. Saw him in the garage at the Idaho Refinery.

Q. On what date was that?

A. Well, I don't know for sure the date. It was the date before I went to work, and I don't know whether I went to work on the 16th or 17th.

(Testimony of Merlin Bowman.)

Q. It was the day before, in any event?

A. It was the day before.

Q. Have you known Mr. Rice previously?

A. Well, I have known him for quite a while—
known of him for quite a while.

Q. Had you been informed that jobs were available?

A. Yes, sir.

Q. Was Mr. Rice the first person that you saw when you went out to the refinery?

A. Yes. [646]

Q. What did he tell you?

A. I just went up and approached him for a job. He told me to wait a few minutes, and I waited a few minutes, and later he came back and said that he was pretty busy that day and for me to come back at eleven o'clock the next day.

Q. Did you come back the next day?

A. Yes, sir.

Q. Whom did you see then?

A. I saw Mr. Rice again.

Q. What occurred on that day?

A. Well, he took me out in a truck, and we drove out to the airport and back to the refinery.

Q. Was this a student run?

A. Yes, sir; I guess it was; it was the only one I had.

Q. What happened on your return?

A. Well, when we got back, why, he took me over to Mr. Copening.

Q. Where was Mr. Copening?

(Testimony of Merlin Bowman.)

A. He was in the office at the Idaho Refinery.

Q. What occurred in Mr. Copenig's office?

A. Well, the first thing, he introduced me to Mr. Copenig.

Q. Whom do you mean by "he"?

A. Mr. Rice introduced me to Mr. Copenig, and we talked a little there, and I don't know what was said then, but Mr. Rice left, and then Mr. Copenig asked me if I belonged to a union. That was after he had partly hired me, I guess, then he asked [647] me if belonged to a union, and I told him that I didn't and never had belonged to any.

Q. Did he say anything further?

A. Just talked in general, is all.

Q. When did you commence work?

A. I am pretty sure that it was that evening, the evening of the 16th or 17th.

Q. The same evening you had this conversation with Mr. Copenig?

A. Yes, sir. [648]

Cross Examination

Q. (Mr. Moyle) Mr. Bowman, you did belong to a railroad union, did you not?

A. Oh, yes, I had belonged to a railroad union.

Q. And you didn't tell Mr. Copenig that? But that is the fact, is it?

A. Yes, I belonged to the Firemen & Oilers over to the railroad.

Q. And Mr. Copenig discussed with you in some detail your qualifications and your past experience, did he not?

(Testimony of Merlin Bowman.)

A. I believe that he did.

Q. He asked you in detail where you had worked previously?

A. I don't remember just what we did talk about there. I remember him talking about where I had worked or where I was working.

Q. And what your experience had been as a truck driver?

A. Well, I believe that he did, either him or Mr. Rice, I don't know which one asked me that.

Q. He asked you about your habits?

A. Yes.

Q. Whether you were sober?

A. He asked me about that.

Q. Whether you took the rest that a driver should take in [649] place of running around town?

A. I can't recall anything like that being mentioned that day.

Q. About getting proper rest between trips or shifts?

A. No.

Q. And he asked you what lodge or church connections you had?

A. I don't recall him asking me that.

Q. He may have done so?

A. He could have done it. I don't remember the conversation.

Q. The only thing that you remember in that whole conversation was that he asked you if you belonged to a union, and you said "no", is that the only thing that you can now remember?

(Testimony of Merlin Bowman.)

A. That is about the only thing, right now.

Q. At that time, you say that you were partially hired?

A. Well, I figured that I was, yes.

Q. As a matter of fact, you had been hired, had you not?

A. Well, I believe that I had, or Mr. Rice would not have taken me over.

Q. You were hired before any questions were asked about any union affiliations?

A. I think that Mr. Rice hired me.

Q. Whether he asked you what lodge you belonged to, or what union you belonged to, you could be mistaken, could you not?

A. Well, I do remember him asking me about the union proposition .

Q. That could not have been a lodge? [650]

A. No.

Q. Didn't he mention to you and ask you if you were an Elk or a Mason or belonged to any fraternal organization?

A. No. [651]

LEONARD THEODORE FOWLER

was thereupon called as a witness by and on behalf of the Board and after being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: What is your name?

The Witness: Leonard Theodore Fowler.

Trial Examiner Riemer: Where do you live?

[652]

The Witness: 1334 South Second, Pocatello, Idaho.

Direct Examination

Q. (Mr. Penfield) Where are you employed?

A. Union Pacific Stages.

Q. What is your position?

A. Bus driver.

Q. Did you ever work for the Idaho Refining Company?

A. I certainly did.

Q. In what capacity?

A. Truck driver.

Q. When were you first employed by the company?

A. About September 7, 1939.

Q. When did your employment with the company terminate?

A. November 14, 1941.

Q. What was your experience as a truckdriver prior to going to work with the company?

A. I had driven truck about two years off and on. I had driven for a while for Covey, for a while for Shell Oil Company at Blackfoot, and a farm truck.

(Testimony of Leonard Theodore Fowler.)

Q. During the time that you worked for the Idaho Refining Company, did you ever have any accidents?

A. Yes, I did, one.

Q. When was that?

A. That was on December 8th at Bear River City, Utah, about six o'clock in the morning.

[653]

Q. What year? A. 1940.

Q. Will you tell us about that accident?

A. Yes. It was foggy, awful foggy; the roads were quite slick, and I have been following a couple of cars about half a mile behind them, when I run into this fog; one car stopped and pulled off the road to adjust his lights, I presume, and the other car stopped in the center of the road. He had no tail light, and before I could—when I first saw him, and before I could get stopped, why, I hit him, but I turned off to the right just before I hit him, and just hit his fender and punctured one tire.

Q. How much damage was done to his car?

A. He sent me a bill on that, and I think that it was \$38 damages.

Q. Was there any damage done to the truck?

A. None.

Q. Was there any investigation of this accident by the police?

A. Yes, we had the police out there. He looked it all over, and checked the tire tracks and marks, and said I done a very good job in getting off as easy as we did on the accident—what I mean is,

(Testimony of Leonard Theodore Fowler.)

the accident could have been worse than what it was if I hadn't have done what I done, and turned off to the side of the road.

Q. Will you state whether you were a member of any labor [654] organization at the time that you went to work for the company?

A. No, sir.

Q. Did you become a member of the Idaho Refining Company Benefit and Labor Association?

A. Yes, sir.

Q. When did you join?

A. I would say about a week after I went to work, or within a week.

Q. Aside from the Association, did you join any other labor organization during the time that you worked for the company?

A. Teamsters' Local here, 440.

Q. I show you Board's Exhibit 5-I, and ask you if you can tell me what that is?

A. Yes, sir. This looks like my application for the Teamsters Local.

Q. Local 440? A. Yes.

Q. Is that your signature on there, on this application? A. Yes, sir; that is.

Q. Where did you sign this application?

A. In the Labor Temple.

Q. Who was with you?

A. Tom Brandt, and there were several other fellows there.

Q. Who was Tom Brandt?

A. Tom Brandt was the secretary for the Local at that time. [655]

(Testimony of Leonard Theodore Fowler.)

Q. Do you recall any of the others who were there?

A. No, I could not come right down and name them; I never paid any particular attention to them.

Q. What was the date that this was signed?

A. On September 29, I believe.

Q. Did you ever attend any union meetings?

A. You mean in 440?

Q. Yes. A. Yes, I attended one.

Q. That was following September 29?

A. Yes.

Q. Was there a driver—were the drivers of the Idaho Refining Company present?

A. I think that practically all the fellows were present.

Q. Do you recall when this meeting was?

A. No, sir; I couldn't name the exact date.

Q. Was it before November 14?

A. No, sir; I believe that it was after.

Q. Do you know if any other drivers had joined the union prior to November 14?

A. Yes, I know practically all the fellows had.

[656]

Q. Were you called on an assignment on November 13? A. I was.

Q. How did you learn of your assignment?

A. I believe that I drove out to the refinery that night.

Q. Had you been called? A. No, sir.

Q. Where did you see your assignment? [659]

A. It was wrote up in the dispatcher's orders.

(Testimony of Leonard Theodore Fowler.)

Q. At the loading dock? A. That's right.

Q. What was the assignment?

A. Well, I was supposed to go to Meridian.

Q. What time?

A. I left the refinery about midnight.

Q. What time did you go out to the refinery?

A. I would say 11:00 o'clock.

Q. Eleven o'clock? A. Yes.

Q. And you say that you left at——

A. Midnight.

Q. Where did you go? A. Meridian.

Q. How far is Meridian?

A. About 270 miles.

Trial Examiner Riemer: That is, one way?

The Witness: Yes, sir.

Q. (Mr. Penfield, continuing) When did you arrive there?

A. About nine o'clock the next morning.

Q. The morning of November 14?

A. That's right.

Q. When did you return?

A. About 7:30 that evening. [660]

Q. What happened when you returned?

A. Well, Spike Henninger met me when I got off the truck and he says, "Copening wants to see you in his office", so I went in and saw Frank and he told me that I was laid off due to the fact that the insurance was cancelled, and he gave me my check, and that's about all.

Q. Is that all the conversation that you had with Mr. Copening? A. Yes, sir.

(Testimony of Leonard Theodore Fowler.)

Q. Was any telegram shown to you?

A. No, sir.

Q. Had your work ever been criticized while you were working for the Idaho Refining Company?

A. No, sir; not unless it was to my back.

Q. Prior to your meeting with Copening on the evening of November 14, had you ever heard anything about the cancellation of insurance?

A. No, sir.

Mr. Penfield: I believe that is all.

Cross Examination

Q. (Mr. Merrill) Mr. Fowler, have you not been present at meetings of the group where driving was discussed there at the refining plant?

A. I had, a few of them.

Q. How many? [661]

A. Oh, it would be kind of hard to say. They held meetings, while not frequently, they did have a few of them; several of them I was out on the road when they held them.

Q. I mean those that you attended, how many did you attend?

A. Oh, I would say maybe six out of the three years that I was there.

Q. Did they become more frequent towards the end of your period of time?

A. No, I believe not.

Q. Do you recall who spoke to you about driving, at those meetings?

(Testimony of Leonard Theodore Fowler.)

A. Well, they all took their turn—Gil and Kermit.

Q. You were advised about careful driving, weren't you?

A. No, no one ever said anything to me about driving carefully.

Q. At those meetings? A. Yes.

Q. Was there advice on careful driving given at those meetings?

A. If there was, I missed out on it.

Q. You never heard that? A. No, sir.

Q. At those meetings, didn't they advise you towards the last that the insurance would be cancelled, if something was not done?

A. They did not.

Q. Were you ever told by any employee of the Association that [662] they were having too many accidents? A. No, sir.

Q. That matter was never called to your attention, or within your hearing?

A. That's right.

Q. By anybody? A. By anybody.

Q. You knew that the drivers were having a lot of accidents, didn't you?

A. Due to the condition of——

Q. I am asking you to answer my question "yes" or "no". A. No.

Q. Didn't you know that they were having some accidents?

A. They were bound to have a few.

Q. Please just answer my question. Did you know that the drivers were having accidents?

(Testimony of Leonard Theodore Fowler.)

Q. Was he a member at the time that you were a member? A. No.

Q. Now, you spoke of Campbell. Campbell was a member of another union and was transferred merely to 440, wasn't he?

A. Yes, that is the way I took it.

Q. He was a member of the Union all the time that he was working for the Refining Company, wasn't he? A. Yes.

Q. Do you know what union he was a member of? A. No, sir; I don't.

Q. You mentioned Wayne Douglas; he, too, was a member of another [667] union and merely transferred to this one, wasn't he?

A. No. Wayne Douglas joined this union here.

Q. Do you know whether or not he was also a member of another union?

A. No, sir; not to my knowledge. [668]

A. STANLEY MERRILL

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: A. Stanley Merrill.

Trial Examiner Riemer: Where do you live?

The Witness: 640 West Hayden, Pocatello.

(Testimony of A. Stanley Merrill.)

Direct Examination

Q. (Mr. Penfield) Where are you employed, Mr. Merrill? [670]

A. At the gun plant in Pocatello.

Q. In what capacity? A. Truckdriver.

Q. Were you ever employed by the Idaho Refining Company? A. Yes.

Q. In what capacity? A. As a driver.

Q. When were you first employed?

A. Oh, I think that it was about the latter part of April, I would say the 26th, of 1939, I think that it was.

Q. April 26, 1939. How long did you continue to work for the company?

A. Until November 14, 1941.

Q. Prior to going to work for the company, what experience had you had as a truck driver?

A. Oh, I had been driving trucks of about the same capacity as the refinery had, about six months. Before that time, I had been driving intermittently for a flour mill; farm truck—produce.

Q. During the time that you worked for the company, have you ever had any accidents?

A. Yes.

Q. Will you tell us about it?

A. I had a major accident, what I would classify as a major accident, I think that it was on March 12 of 1941. [671]

Q. Where did this occur?

A. Oh, a mile or a mile and a half north of the State Fair Grounds at Boise.

(Testimony of A. Stanley Merrill.)

Q. What happened?

A. The nature of the accident?

Q. Yes.

A. I was returning from Caldwell to Boise, and had 100 cases of oil on top of the truck, with quite a high center of gravity; also, I had approximately 900 gallons of gasoline in a 2700 gallon compartment, and as I rounded a curve—taking a sharp curve, the tank just seemed to become separated from the truck in the fifth wheel unit, and dropped on the driver wheels—I guess it dropped there—it turned over out to the side, hit a utility pole, stopped off the side of the road. Then it turned over on its side right in the middle of the road. The gasoline wasn't lost. It was checked later and was about 75 gallons short. The oil was scattered over a considerable distance, went down over the bank into an irrigation ditch—part of it.

Q. Did you generally carry oil on the top of the truck?

A. Returning from Caldwell to Pocatello, we nearly always carried oil on top.

Q. Was that on instructions from the company?

A. Yes.

Q. What was the extent of the damage to the truck? [672]

A. Oh, the truck was damaged—the left front fender was mashed. It was fixed, though, and not replaced. The spotlight and the cab were more or less shaken up. The windshield—the same windshield was still in it, and used after. The tank

(Testimony of A. Stanley Merrill.)

was bent in two places, which I would say would not be very much work to straighten out.

Q. How fast were you going at the time?

A. I estimated my speed at about 25 miles per hour. Witnesses estimated it at 20.

Q. Did you ever report it to Mr. Moyle?

A. Not directly.

Q. Did Mr. Moyle or Mr. Rice ever say anything to you in connection with it?

A. I talked to Rice the following morning on the telephone.

Q. Did any of them ever indicate to you whether it was your fault?

A. No, they seemed to be on the contrary.

Q. Were you ever suspended for this accident?

A. No.

Q. When did you resume driving?

A. I think that I was in Boise possibly 24 hours after that. The doctor held me one day for observation, and I came back the next day on the truck.

Q. Were you warned that you might be discharged if you had another accident? [673]

A. No.

Q. Did you have any other accidents while you worked for the company?

A. I had a couple of minor accidents.

Q. Were these before or after the one that you just referred to?

A. One before, and one after.

Q. When were these accidents?

(Testimony of A. Stanley Merrill.)

A. The one before,—I don't remember the date—was along the first snowstorm of the year. I was going east out of Lava Hot Springs, about four miles east, and there was a car pulled over in the middle of the road and practically stopped and due to defective brakes it was impossible for me to stop. I pulled alongside the road as fast as I could in order to avoid hitting him, but I couldn't avoid it without running off the road, so the bumper of the truck struck the back end of a Ford coupe.

Q. How much damage was done?

A. Oh, I would estimate it about \$35 to the automobile.

Q. To the automobile?

A. Yes. There was no damage to the truck.

Q. What was your other accident?

A. It was just south of Ogden, a little ways. I don't remember how far—right around Weaver County line, and the road was good. It was just sprinkling a little bit—very little rain—I was travelling about 40 miles per hour, and a fellow in a

[674]

pick-up passed me immediately; after passing me he sighted some construction ahead and so he swung into my lane of traffic directly in front of me, and applied the brakes, and I could not stop, and the consequences were the bumper hit the tail gate of the pick-up.

Q. How much damage was done?

A. Well, I don't know. He stated at the time that it was less than \$25 and he was in a hurry,

(Testimony of A. Stanley Merrill.)

and there would be no need for a police investigation, so I don't know—I understand later he sent in a claim for something in *excess this*. I don't know what it was, though.

Q. (Trial Examiner Riemer) What is a pick-up?

A. Well, commonly called a half-ton truck.

Q. (Mr. Penfield, continuing) Was any damage done to the truck, the company truck?

A. No.

Q. Do you know whether the insurance company paid anything on either of these accidents?

A. No, I don't.

Q. Did you refer both of these accidents——

A. Yes.

Q. ——to the company? Did anyone ever attempt to assess the blame on you for these accidents?

A. No.

Q. Were you suspended for either of them?
[675]

A. No. [676]

Q. (Mr. Penfield) I show you Board's Exhibit 23 and ask if you can tell me what that is?

A. Notice of separation stating I am no longer employed by the company.

Q. Is that the notice that you testified you received from the [683] company?

A. Yes.

Mr. Penfield: I offer this as Board's Exhibit 23.

Mr. Moyle: We have no objection.

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit 23.

(Testimony of A. Stanley Merrill.)

(Whereupon the document hereinabove referred to was marked and admitted in evidence as Board's Exhibit 23.)

BOARD'S EXHIBIT No. 23

Notice of Separation and Disqualification

1. Worker's Name (last) Merrill, (first) Stanley, (middle) A. 2. S. S. A. No. 519-09-9602
3. Place of Employment Idaho Refining Company, Pocatello, Idaho
4. Last Day Worked Nov. 14, 1941 5. Regular Occupation Truck Driver
6. Reason for Separation:
 - ☐ Left Work Voluntarily
 - ☐ Discharged for Misconduct in Connection with Employment
 - ☐ Strike, Lockout or Other Labor Dispute
 - ☐ Sickness, Injury or Other(Explain Below)
7. Explain in Detail: Services terminated due to reorganization made necessary by cancellation of insurance.
8. Has Worker Received Wages in Lieu of Notice?
Yes ☐ No ☒ Amount \$.
Equal to Pay from the Period from (month) (day) to (month) (day)

I certify that the above information is true and correct. I do (do not) waive notification of the validity of any claim for benefits arising in connection with this report.

(Testimony of A. Stanley Merrill.)

9. Employer's No. 250 2911-02830
10. Firm Name Idaho Refining Company
11. Address Box 767 Pocatello, Idaho
12. Signature John H. Peterson
13. Date Nov. 14, 1941
14. Title Treas.

State of Idaho

Unemployment Compensation Division

Industrial Accident Board

Boise, Idaho

Notice to Employer

Fill out in triplicate; give yellow copy to worker, keep blue copy for your files, mail white copy to the Unemployment Compensation Division.

Notice to Worker

Take this notice to the nearest Idaho State Employment Service Office if you wish to file a claim for benefits.

Instructions To Worker

Take this notice immediately to the nearest Idaho State Employment Service Office listed below if you desire to file a claim for Employment Compensation Benefits. If the nearest office is inaccessible to you, send a post card to that office asking for information on the manner of filing claims.

In order to receive benefits for unemployment, you must:

1. Register for work
2. File a Claim for Benefits
3. Be able to work and available for work
4. Serve a waiting period of two weeks of total

(Testimony of A. Stanley Merrill.)

unemployment (a week of unemployment is a week of no work or a week of less than full-time work during which wages earned were less than the weekly benefit amount established for the individual claimant). The waiting period weeks need not be consecutive but must be wholly within a period of 91 consecutive days.

5. Have earned wages in covered employment during the base period of \$140 or more, \$78 of which must have been earned in a single quarter.

Certain conditions surrounding separation from work may disqualify you for a period of from one to five weeks. You will be informed of such disqualification, if any, and be given an opportunity for a fair hearing. Among the disqualifying conditions are:

- (a) Voluntarily quit without good cause in connection with your employment
- (b) Discharged for misconduct in connection with your employment
- (c) Failure to apply for or accept available, suitable work when offered or directed by the Employment Service or the Industrial Accident Board.

Warning

IT IS NOT NECESSARY TO EMPLOY ANYONE TO AID YOU IN COLLECTING BENEFITS. A representative in the office to which you

(Testimony of A. Stanley Merrill.)

report will explain your rights and what you must do to qualify for benefits.

Idaho Employment Service Offices are located at:

Boise	Jerome	Preston
Bonnors Ferry*	Lewiston	Rexburg ****
Burley**	Moscow	Salmon
Caldwell	Nampa***	Sandpoint
Coeur d' Alene	Orofino	St. Anthony
Grangeville	Payette	St. Maries
Idaho Falls	Pocatello	Twin Falls
		Wallace

* Branch of Sandpoint Office

** Branch of Twin Falls Office

*** Branch of Caldwell Office

**** Branch of St. Anthony Office

Mr. Penfield: In the off-the-record discussion, it was agreed between the Board and the Company, that notices similar to Board's Exhibit 23 in evidence, except as to the names of the drivers, the addresses of the drivers, and the Social Security numbers of the drivers, were given to all of the drivers named in the complaint with the exception of Wayne Douglas. Do you so stipulate?

Mr. Moyle: Unless there is some difference in the date of discharge. I think that is correct.

Mr. Penfield: Do you so stipulate?

Mr. Moyle: It is so indicated.

(Testimony of A. Stanley Merrill.)

Trial Examiner Riemer: It is so stipulated, Mr. Moyle?

Mr. Moyle: Yes. [684]

Cross Examination

By Mr. Moyle:

Q. And when you joined Local 440, Mr. Archibald had nothing to do with your joining it, did he?

A. Oh, I talked to him a number of times.

Q. You did? A. Yes.

Q. It was through his efforts you joined?

A. I wouldn't say through his efforts, but it might have been through some of his influence.

Q. Well, was it? A. Partly.

Q. What did he say to you that influenced you to join and except for which you would not have joined?

Mr. Penfield: He didn't testify to that.

A. I don't know whether I wouldn't have joined. I don't like that question that way.

Mr. Penfield: It isn't a proper question.

Mr. Moyle: I don't blame you. [693]

Q. (By Mr. Moyle): In other words, you would have joined regardless of anything Archibald said, wouldn't you?

A. Well, I don't know for sure, but I think I would.

Q. And you didn't pay Archibald any of your dues, did you?

A. I gave him some of my money.

Q. You did? A. That went for my dues.

(Testimony of A. Stanley Merrill.)

Q. Did you ask him to take it over and give it to the Union?

A. I don't remember whether I asked him or whether he offered to. It was rather inconvenient for me to get down there at that time and he could have offered to take it there or I could have asked him to. Anyway, he did. [694]

Q. (By Trial Examiner Riemer): Mr. Merrill, you testified that before the truck drivers went on the monthly salary arrangement you were receiving 50c an hour, is that correct?

A. Actually to put it in hours we were receiving more than that.

Q. Well, then you tell me what you were receiving. Tell me this, how was your wage computed prior to this [695] changeover?

A. May I cite a trip for an example?

Q. Yes.

A. On some of our trucks we were driving at that time we were paid 22 hours at that time a trip to Salmon City and return, and it was possible to do it without violating any I. C. C. regulations, safety regulations or anything else, it was possible for us to complete that trip in 17 hours. Consequently when we turned our time card in we would turn in such as 22 hours, and actually we were 17 hours doing it. Therefore we would receive \$11 for 17 hours' work which would be some over 50c an hour.

[696]

(Testimony of A. Stanley Merrill.)

Recross Examination

By Mr. Moyle:

Q. Of course if you would make this trip to Salmon City in 14 hours you would have got still more per hour, wouldn't you?

A. Technically, yes.

Q. But the company required you to take 22 hours for the trip? A. No, they didn't.

Q. And allowed you 22 hours' pay for it?

A. They allowed us 22 hours' pay for the trip.

Q. What is the distance from Pocatello, the refinery, to Salmon City?

A. Oh, I don't remember.

Q. And after you leave Blackfoot, 25 miles away, the roads are dirt roads, are they not—graded roads? A. A very small percentage.

Q. How far are they oiled?

A. Oh, 40 miles would cover everything that wasn't oiled, I think.

Q. That is from where, Mackay to Salmon City? [698]

A. That is from the top of Willow Creek summit, that is beyond Mackay, into Challis, then another stretch down the Salmon River.

Q. When was the road oiled north of Mackay?

A. I don't know.

Q. A good part of this road is a circuitous route up a canyon, isn't it, over a divide?

Mr. Penfield: I object to that as being immaterial.

(Testimony of A. Stanley Merrill.)

Trial Examiner Riemer: The objection is overruled.

Q. (By Mr. Moyle): You know it follows along the Salmon River a good 20 miles, and other rivers?

A. It follows down the Salmon River too.

Q. It follows up when you are going back?

A. Yes.

Q. And follows up and down the Lost River too, doesn't it?

A. No, sir, it crosses it.

Q. And you don't know the distance?

A. No.

Q. Approximately?

Trial Examiner Riemer: Isn't about 230 miles a good guess at the distance, Mr. Witness, between Pocatello and Salmon City?

The Witness: I was trying to recall.

Q. (By Mr. Moyle): Well, we can show that distance without wasting any time. Now, as a matter of fact, whenever you [699] made this trip you undertook to make it in 17 hours in place of 22 hours, didn't you?

A. Not necessarily.

Q. Well, how long did it take to make it?

A. It would all depend on the equipment you would have.

Q. Did you ever take the full 22 hours?

A. Oh, yes—more than that.

Q. When you had no trouble?

A. Yes—no, not when I didn't have any trouble.

(Testimony of A. Stanley Merrill.)

Q. And you were allowed corresponding hourly wages for other trips depending on their mileage?

A. Yes.

Q. And on all of those other trips were you able to complete the return trip in less than the number of hours allowed, I mean barring accidents and delay?

A. Not all of them, but on all of them over 150 miles round-trip you could easily.

Q. You could knock off how many hours maximum on trips over 150 miles?

A. Well, it corresponded directly to their mileage.

Q. How far is Boise, for instance?

A. I always call it 250 miles.

Q. How many hours were you allowed for that?

A. Small truck I think it was 20, intermediate class was 22 I believe and the truck and trailer class paid an [700] hour and a half more than that if I remember right.

Q. (By Trial Examiner Riemer): For the round-trip?

A. Yes.

Q. (By Mr. Moyle): How many hours would you say you knocked off of that time in making the trip?

A. Four.

Q. Four hours? A. Yes.

Q. You would come in four hours earlier?

A. If you would make your connections for unloading and didn't have any unnecessary delays

(Testimony of A. Stanley Merrill.)

you could knock off four hours from your trip easy.

Mr. Moyle: I think that is all.

Redirect Examination

By Mr. Penfield:

Q. After you were put on a salary in July, 1941, was there any advantage to your making a 22-hour trip in 17 hours? A. None whatever.

Q. And you went on a salary, and were on a salary until November 15, 1941? A. Yes.

[701]

R. E. MILLER

was called as a witness herein, being duly sworn, and testified as follows:

Direct Examination

By Trial Examiner Riemer:

Q. State your name, please.

A. R. E. Miller.

Q. Where do you live? A. Jerome, Idaho.

Q. (By Mr. Leicht): Where are you employed at the present time?

A. Idaho Refining Company.

Q. In what capacity?

A. Driving transports.

Q. When did you first start working for the Idaho Refining Company?

A. I pulled my first trip about the 19th of April in 1941.

(Testimony of R. E. Miller.)

Q. And how long did you work after April, 1941? A. Until November 14th.

Q. 1941? A. That's right.

Q. And then you discontinued working for the company? A. That's right.

Q. And when did you resume your work for the company? A. March 10, 1942.

Q. Prior to your first starting to work for the company, [702] how much experience had you had as a truck driver? A. About five years.

Q. Was that working just as a truck driver or was any part of it driving oil transports?

A. That was just as truck driver.

Q. During the time you worked for the Idaho Refining Company prior to November 14, 1941, did you ever have any accidents? A. No, sir.

Q. From the period between April 19, 1941 and November 14, 1941, were you a member, or did you become a member of the Idaho Refining Company Employees' Benefit and Labor Association?

A. Yes, sir.

Q. About how soon after?

A. I imagine a month or six weeks.

Q. Prior to your discharge on November 14, 1941, did you ever join any other labor organization? A. The 440 Union.

Q. That is the Teamsters' Union?

A. Yes, sir.

Q. I show you Board's Exhibit 5-0 and ask you what that is?

(Testimony of R. E. Miller.)

A. Well, that is a blank I filled out to join Local 440—Teamsters' Union.

Q. And did you sign it? [703]

A. Well, evidently, that looks like my handwriting.

Q. Is that your signature? A. Yes, sir.

Q. Were you later initiated as a member of that organization? A. Yes, sir.

Q. When did you sign that application?

A. This says October 2nd.

Q. Would that be about correct?

A. I think so.

Q. What were the circumstances which led up to your joining the Union?

A. Oh, I don't know, it was just a matter of talking it over and deciding that we wanted to join the Union.

Q. Where did you sign that card, if you remember? A. In August Rosqvist's house.

Q. Was anybody else with you at the time, if you recall?

A. No, just August Rosqvist and his secretary.

Q. And you say you were rehired by the company on March 10, 1941? A. That's right.

Q. Immediately prior to your being rehired, did you talk with anyone connected with the company?

A. Only Spike the night he hired me.

Q. Who is Spike? [704]

A. Mr. Henninger.

Q. What was the substance of your conversation with Mr. Henninger?

(Testimony of R. E. Miller.)

A. Well, he told me that—first he asked me if I could go to work and I told him I could and he said they had a truck and no driver, and then he asked me how I stood with the Union, and I told him I had a withdrawal card and asked him if he wanted to see it, and he said no, as long as I had it that's all that was necessary.

Q. When was that, if you can recall?

A. I imagine about ten o'clock on March 10th.

Q. In the evening? A. Yes.

Q. Where was this conversation?

A. In my home.

Q. He came over to see you, did he?

A. Yes, sir.

Trial Examiner Riemer: Was this in Jerome?

The Witness: This was in Pocatello.

Q. (By Mr. Leicht): At that time you were residing in Pocatello? A. Yes, sir.

Q. When did you start to work?

A. That same evening about fifteen minutes later.

Q. Shortly after your commencing work, did you have a [705] talk with Mr. Rice? A. Yes.

Q. Who is Mr. Rice?

A. He is—at that time he was the driver foreman.

Q. Driver foreman?

A. Yes, over the trucks.

Q. By that time you mean in March?

A. That's right.

Q. Was he also driver foreman before that time?

(Testimony of R. E. Miller.)

A. Yes.

Q. For some years or some time?

A. I don't know how long—when I started working there.

Q. He was foreman when you started working there?

A. That's right.

Q. Now, tell us the conversation that you had with Mr. Rice.

A. Well, he merely told me that in case I had anything to talk over, to come in and sit down and they would be glad to listen to me and also that during that meeting in July—I didn't attend—but he told me that it was agreed that if that wasn't enough money the drivers were to come and notify the office, and he was satisfied that if they had, the office would have done something about the wage scale.

Q. Then did he say anything further about the other truck [706] drivers?

A. Well, I believe he mentioned that if they had done that they probably would be working now.

Q. Did Mr. Rice mention anything about the Union directly or indirectly?

A. Well, he merely stated that if the drivers had come to the office instead of going uptown—I believe that was his words.

Q. If they had done that they would still have their jobs?

(Testimony of R. E. Miller.)

A. He didn't say their jobs, he just said they would be working now, as nearly as I remember it.

Q. Was that about the substance of the conversation?
A. Yes, I think so.

Q. Then on November 14th, what occurred?

Trial Examiner Riemer: Excuse me for interrupting, I understand in this alleged conversation with Rice, that occurred sometime after March 10th?

Mr. Leicht: Several days afterwards, as I recall it.

Trial Examiner Riemer: Please fix the time.

Q. (By Mr. Leicht): Can you tell us about when that conversation with Rice took place that you just testified to?

A. Well, I imagine it would be the 13th or the 14th. I had pulled two or three trips before I had been able to see Mr. Rice. [707]

Q. That would be March of—

A. 1942. Mr. Rice called me up and asked me to come over to the garage about ten o'clock in the morning or 9:30, something like that, and when I went over he told me our insurance had been cancelled and that he was sorry, and that is about the substance of that.

Q. Had you ever heard anything prior to that time about the cancellation of insurance?

A. No, sir.

Q. Were you ever warned about any accidents?

A. No, sir.

(Testimony of R. E. Miller.)

Q. Had you ever been reprimanded for your driving? A. No, sir.

Q. Were you ever threatened with discharge because of the accident record? A. No, sir.

Mr. Leicht: I guess that is all.

Cross Examination

By Mr. Merrill:

Q. Mr. Miller, do you recall any comment made to you before November 14, 1941, that the accidents were too numerous?

A. No, sir, not to my knowledge.

Q. Didn't you hear some comment around among the boys to that effect? A. No, sir. [708]

Q. Or that something had to be done about it?

A. No, sir.

Q. Did you attend any of the meetings?

A. I never attended any meeting.

Q. Where were you during the period of time meetings were held?

A. There were two or three meetings held when I was out on trips, all except one and I could have attended at that time but my transportation was taken away about the time I got ready to leave for the meeting.

Q. You mean your private automobile?

A. No, I was riding a bicycle at that time, staying at my sister's place, and when I went out to get on the bicycle, the kids had beaten me to the bicycle.

Q. So you didn't have any way to get out?

A. That's right.

(Testimony of R. E. Miller.)

Q. And didn't go to that meeting?

A. That's right.

Q. Had you ever heard Mr. Rice discuss accidents? A. No, sir.

Q. You have known of a number of accidents?

A. Yes, sir.

Q. You knew it was necessary, did you not, that the Company carry insurance?

A. Yes, sir. [709]

Q. You knew there was a possibility of trouble with the insurance company if too many accidents occurred?

A. I didn't know what the ratio was on accidents—how many they allowed.

Q. On the 14th of November when you were discharged, Mr. Rice told you, I understand, that it was because the insurance had been cancelled?

A. That's right.

Q. Did he tell you anything else with reference to it?

A. That is all, just that our insurance was cancelled.

Q. He called you up in the morning and told you to come out? A. Yes.

Q. And you went out? A. Yes, sir.

Q. And a check was given you then?

A. No, sir.

Q. How long—

A. Checks were issued about noon of that day but I had come before that and didn't go back for mine until Monday.

(Testimony of R. E. Miller.)

Q. What time did you go out on the morning of the 14th? A. Over to the garage?

Q. Yes.

A. I imagine it was about ten o'clock.

Q. Did you see other drivers there then? [710]

A. Yes, Ayers was there when I got there, Kenneth Brower soon came, Carl Hill soon arrived, John Evans, there were several.

Q. Did you go right in and see Mr. Rice then?

A. He was outside the garage.

Q. Talking with the boys?

A. No, he either saw me coming or was coming out and met me or happened by.

Q. He met you as you came up?

A. Yes.

Q. And told you this? A. Yes.

Q. And you didn't go into the office?

A. No, sir.

Q. You turned around and went back home?

A. After chatting with the boys a while.

Q. Then on Monday following this you went out to get your check? A. Yes.

Q. And it was given to you? A. Yes.

Q. When did you next see Mr. Rice or Mr. Henninger? A. After Monday?

Q. Yes, following that Monday?

A. Well, I don't recall. I saw Mr. Henninger one day when [711] I just went over more or less visiting around.

Q. What day was that?

(Testimony of R. E. Miller.)

A. Well, I couldn't say.

Q. Do you recall Mr. Henninger calling you up and asking you if you wanted to work?

A. That's right, yes.

Q. When was that?

A. That was sometime before Christmas, just a few days prior as I remember it.

Q. Of 1941? A. Yes.

Q. And you went out to see him about it?

A. Yes, sir.

Q. When you went out, what did Mr. Henninger say to you?

A. He offered me a job on the loading dock?

Q. Did he tell you what the wage would be?

A. Yes.

Q. What did he say?

A. 60c an hour until I think six months, then he would raise me, I think, it was 65 or 70c, I don't remember which.

Q. That would be for 40-hour week?

A. Yes.

Q. And time and a half for overtime?

A. I imagine it was. There was nothing said.

Q. It always had been that way? [712]

A. Yes.

Q. In other words, whenever you worked there on the hourly basis you worked on a 40-hour week with time and a half for overtime?

A. Well, we had up until July.

Q. I mean when you were on the hourly basis?

(Testimony of R. E. Miller.)

A. I didn't know whether the loading dock worked at time and a half or not.

Q. That was how many days before Christmas?

A. Well, I don't recall. It might have been a week or it might have been ten days.

Q. What did you tell Mr. Henninger?

A. Well, I told him the Union wouldn't let me.

Q. Were those the words you used?

A. Well, I believe so.

Q. You meant the Union had told you not to go to work for them?

A. Well, actually nobody in the Union had told me not to go to work, but Boyd Cornia had been called for the same work at the same time and he had gotten in touch with the Union man and I in turn asked Boyd to see what he had found out, and that is what he told me, that the Union said not to take it.

Q. What official of the Union told him, did he say?

A. As I understand it, Tom Brandt, who had talked to [713] August Rosqvist.

Q. Did they give any reasons for your not taking it?

A. Well, we had joined the Teamsters' Union and they told us we didn't have to take anything unless it was driving.

Q. And for you not to take anything else?

A. That's right.

Q. Was that the reason why you refused employment at that time?

A. Yes, sir. [714]

(Testimony of R. E. Miller.)

Q. But it was in March that you were offered employment by the refining company as a truck driver? A. Yes.

Q. You undertook that and have been with them since? A. Yes.

Q. Now, I understood you to say that when Mr. Henninger hired you, he merely asked that so far as any Union talk was concerned, if you belonged to the Union?

A. He asked me how I stood with the Union.

Q. That was in the conversation that you had with him? A. Yes, sir.

Q. And was that after he had hired you?

A. Well, I would say that it was. He told me to get my shoes on, then asked me how I stood with the Union.

Q. But you then understood you had already been hired when he asked you that question?

A. That was my impression.

Q. It was just a casual remark?

A. I took it to be that.

Q. He didn't say that a member of the Union would not be given the same chance—— [716]

A. When I went over to work on the loading dock he said he didn't care whether I belonged to the Union or not.

Q. In that first conversation he told you he didn't care if you belonged to the Union or not?

A. As far as working on the dock was concerned.

Mr. Penfield: I think that was the subsequent conversation. It wasn't the first conversation.

(Testimony of R. E. Miller.)

Trial Examiner Riemer: We will let the witness testify. Clear it up.

Mr. Merrill: We will clear that up.

Q. (By Mr. Merrill): At the time Mr. Henninger told you he didn't care whether or not you belonged to the Union, that was in December when you went out on the dock and he offered you a job working on the dock? A. Yes.

Q. And he told you then he didn't care whether you belonged to the Union or not?

A. When I told him the Union would not let me work there he said he didn't care whether I belonged to the Union or not.

Q. And the only reason then that the Union matter came up the second time was because of this first discussion?

Mr. Leicht: I object to that as calling for a conclusion from this witness.

Trial Examiner Riemer: Overruled. [717]

A. Well, he had been kidding me pretty heavy about the Union and I imagine that is why he asked me.

Q. What do you mean by kidding?

A. When I refused that other job he asked if the Union would pay my grocery and pay my coal bill.

Mr. Leicht: I object to that as being improper.

Mr. Merrill: That is an explanation.

Trial Examiner Riemer: Overruled.

Q. (By Mr. Merrill): Now, then, isn't it a fact, Mr. Miller, that in the conversation in March, 1942, to which you have made reference, the remark which

(Testimony of R. E. Miller.)

Mr. Henninger made about how you stood with the Union, was a mere casual remark induced by the prior conversation in which he said he didn't care whether you belonged to the Union or not?

A. Well, I took it to be that at the time.

Trial Examiner Riemer: What does the Board contend as to that remark, "How you stood with the Union"? Do they contend that constitutes an 8-1 violation?

Mr. Penfield: We contend the whole thing taken together is a violation of the Act.

Q. (By Mr. Merrill): How did the item of the withdrawal card come up in that conversation in March, 1942?

A. He asked me how I stood with the Union.

Q. That was the first time the Union had been mentioned, wasn't it? [718]

A. That night?

Q. Yes. A. Yes.

Q. And you had already been hired?

A. Well, I took it I was hired. He told me to get my shoes on as soon as I came over.

Q. You understood when he made that comment as to how you stood with the Union that it was a casual remark induced by the conversation you had had with him in December, 1941?

A. Well, that is the way I took it.

Q. And that you merely made the comment that you had a withdrawal card?

A. Yes, sir.

Q. And he said nothing more?

A. That's all that was necessary.

(Testimony of R. E. Miller.)

Q. You said, "I will show it to you if you want me to"? A. That's right.

Q. And he said, "I don't want to see it"?

A. I asked if he wanted to see it, and he said, "No, as long as you have it that's all that is necessary".

Q. Now, in your opinion, did the matter of Unionism have anything whatever to do with your hiring?

Mr. Leicht: I object to that as calling for a conclusion of the witness, plain and simple. [719]

Trial Examiner Riemer: I would like to have the witness' opinion. Overruled. Read the question.

(The last question was read.)

A. Well, I would say that I was hired but the question of Union came up——

Q. Well, I will put it this way: If you had been a member of the Union, do you have any thought that Mr. Henninger would have refused to employ you?

A. Well, that would be a matter of opinion.

Q. Yes, after March, 1942?

A. Well, I don't know whether it would or not.

Q. You had no information from him that he would? A. I had no information, no.

Q. In the light of what he had said to you in December, do you have any idea that your membership in the Union would have made any difference?

A. Well, of course, the loading dock was not Union.

(Testimony of R. E. Miller.)

Q. No, but he told you in December that it didn't make any difference whether you belonged or not, to him, and he never had said anything different from that to you?

A. No, not to my knowledge.

Mr. Moyle: We think that is all.

Redirect Examination

By Mr. Leicht:

Q. At the time you were offered the job on the loading dock you said nothing was said about time [720] and a half?

A. Not to my knowledge. [721]

Recross Examination

By Mr. Merrill:

Q. When you went up to the Union to join, did Mr. Archibald go with you? A. No, sir.

Q. Was he influential in getting you to join or not or do you know anything about it?

A. Oh, he might have been, but there is no need of giving him any credit, it was of my own free will.

Q. All your own free will? A. Yes. [722]

Redirect Examination

By Mr. Leicht:

Q. Did Mr. Archibald talk with you about the Union?

A. He asked me what I thought about it.

Q. In December, 1941, Mr. Henninger didn't offer you a job as truck driver, did he?

A. No.

Mr. Leicht: That is all.

(Testimony of R. E. Miller.)

Q. (By Trial Examiner Riemer): Mr. Miller, you testified to a conversation about March 13th or 14th with Mr. Rice, do you remember that?

A. Yes.

Q. You testified in the course of that conversation Mr. Rice referred to a meeting that was held in July? A. Yes, sir.

Q. What meeting was that?

A. That is when the hourly basis was changed to a monthly basis, when the drivers were put on a monthly or straight salary.

Q. Did you attend that meeting?

A. No, sir.

Q. Did you hear the witness Merrill testify?

A. Part of it.

Q. Do you know Stanley Merrill?

A. Yes, sir. [723]

Q. Did you hear him testify about a meeting that was held at the plant, attended by truck drivers and by Mr. Gilbert Moyle and Mr. Rice, did you hear him testify about that meeting?

A. I heard him say something—I came in during that.

Q. Did you hear him testify that at this meeting Gilbert Moyle advised the truck drivers they would be paid thereafter on a monthly basis?

A. I don't believe I came in while he testified to that meeting.

Q. I am wondering whether that is the July meeting that Mr. Rice allegedly referred to in his conversation with you—do you know?

(Testimony of R. E. Miller.)

A. I imagine it was that meeting.

Q. You did not attend that July meeting?

A. No.

Q. (By Mr. Leicht): Was there dissatisfaction among the drivers after that change in the wage scale?

A. Yes, sir, I would say there was.

Mr. Leicht: That is all.

Recross Examination

By Mr. Merrill:

Q. Was the hourly time of the drivers after that meeting less or more?

A. It was less. [724]

LOREN R. McBRIDE

was called as a witness herein by and on behalf of the Board, being duly sworn, and testified as follows:

Direct Examination

Q. (Trial Examiner Riemer) Where do you live?

A. Baker, Oregon, at present, that is my home address.

Q. (By Mr. Penfield) Where are you employed at the present time?

A. Inland Empire Refineries of Spokane.

Q. Do you know Mr. R. E. Stiff?

A. Yes.

Q. Did you ever work for Mr. Stiff?

A. Yes, sir.

Q. When did you first work for Mr. Stiff?

(Testimony of Loren R. McBride.)

A. Truck driving I worked for Mr. Stiff in 1935.

Q. You were driving one of his trucks, you say?

A. Yes, sir.

Q. Who paid you? A. Mr. Stiff.

Q. Where were you working?

A. The Dalles, Oregon.

Q. How long did you continue to work in this manner? [731] A. From 1935 until 1938.

Q. About what time in 1938?

A. In the fall of 1938.

Q. Did any change occur at that time?

A. Yes, sir.

Q. What was this change?

A. Mr. Stiff leased two of his trucks to the Husky Refining Company.

Q. Did you continue to drive the trucks?

A. Yes, sir.

Q. Who was paying your wages?

A. Husky Refining Company.

Q. Where were you working?

A. Out of Idaho Falls.

Q. How long did this arrangement continue?

A. During the winter months of that winter until the spring of 1939, about February.

Q. What occurred in February?

A. Well, Mr. Stiff took his trucks back and discontinued his haul for the Husky Refining Company.

Q. What did you do?

(Testimony of Loren R. McBride.)

A. I came down to Pocatello and secured a job with the Idaho Refining Company.

Q. In what capacity? A. As truck driver. [732]

Q. Where were you working, out of Pocatello?

A. Yes, sir.

Q. This was in February, 1939, you said?

A. Yes.

Q. How long did you continue to work for the Idaho Refining Company?

A. For approximately a year and a half.

Q. That is out of Pocatello? A. Yes, sir.

Q. What change occurred at the end of that period? A. I quit.

Q. What was the next position you had?

A. I went back to Baker and worked for Mr. Stiff.

Q. About what time did you commence work for Mr. Stiff? A. July of 1940.

Q. Were you being paid by Mr. Stiff?

A. Yes, sir.

Q. Were you driving a truck?

A. Yes, sir.

Q. How long did you continue to work in that manner? A. Eleven months, until June.

Q. What change occurred at the end of this eleven months' period?

A. The Inland Empire Refineries leased two trucks of Mr. Stiff's. [733]

Q. That is, the trucks you had been driving?

A. Yes.

(Testimony of Loren R. McBride.)

Q. Following this, who paid your checks?

A. The Inland Empire Refineries.

Q. How long did this arrangement continue?

A. It started in June and continued until the 10th of October the same year.

Q. Did you testify which year that was?

A. 1941.

Q. What change occurred in October, 1941?

A. Idaho Refining Company took the same two trucks over supposedly.

Q. Did you continue to drive these same trucks?

A. Yes, sir.

Q. Who paid your checks?

A. The Idaho Refining Company.

Q. That is, after October, 1941? A. Yes.

Q. You stated that you commenced to work for the Inland Empire Refining Company in about June, 1941. Can you tell us what sort of work you were doing? A. Truck driving.

Q. Where were you working?

A. Out of Baker.

Q. Will you describe for us just the sort of trips you were [734] making?

A. We worked out of Baker, all drivers on the two trucks, there were five drivers, we went to Umatilla and returned, that is one trip, then on toward Boise, we drove from Baker to Boise Valley and different parts in Boise Valley, Caldwell, and Nampa.

Q. Where would you pick up gasoline?

A. At Umatilla and Attalia.

(Testimony of Loren R. McBride.)

Q. Where did you deliver it?

A. To the Boise Valley, various points.

Q. Including Boise itself? A. Yes.

Q. You stated that in October, 1941, the Idaho Refining Company took over these trucks and thereafter paid you? A. Yes, sir.

Q. Did any change take place in the manner in which you had to work?

A. No, sir, it was the same work.

Q. (By Trial Examiner Riemer) Who gave you orders?

A. The Idaho Refining Company after October 10th.

Q. (By Mr. Penfield) What was Mr. Stiff's relation to you during all this period?

A. He was, well, what you might call straw boss.

Q. When you were working for the Inland Empire? A. Yes. [735]

Q. Was the same true when you drew your checks from the Idaho Refining Co.?

A. Yes, sir.

Q. Did they give you all your directions?

A. Yes, sir.

Q. Did he hire the drivers?

A. Hired and fired. He had that capacity.

Q. Are you a member of any labor organization? A. Yes, sir.

Q. What organization?

A. Teamsters' Union Local 900.

Q. Where is that local?

(Testimony of Loren R. McBride.)

A. Baker, Oregon.

Q. When did you join this organization?

A. The first part of September of 1941.

Q. Was that when you were working for the Inland Empire Refining Company?

A. Yes, sir.

Q. Did you wear a Union button?

A. Yes, sir.

Q. Do you recall any conversation with Mr. Gilbert Moyle in the fall of 1941?

A. Yes, sir.

Q. Can you tell us the time and place of this conversation?

A. It was in Boise, at the Boise Bulk Plant of the Idaho [736] Gas & Oil Company, that is what they call it there.

Q. How did you happen to be there?

A. I was delivering a load of gasoline from Umatilla or Attalia and Mr. Moyle was there.

Q. What was the date?

A. It was approximately the first part of October, 1941.

Q. Was it before or after trucks had been transferred to the Idaho Refining Company?

A. Before they had transferred.

Q. How much before?

A. Just a few days. I would say a week or ten days.

Q. Describe what occurred.

A. Mr. Moyle came up to me and said, "I am taking up the trucks"—Mr. Gilbert Moyle—and

(Testimony of Loren R. McBride.)

he said, "You don't need to think that Union but-
ton you are wearing is going to do you any good
up there with their bunch", and I said, "Won't
it? What if we get your bunch to join?"—the
bunch at Pocatello—and he said, "If you do, I
will can every one of them".

Q. Did you say anything further?

A. I said,—just let me think a minute—I said,
"What will you do for drivers? They are kind
of scarce." And he said, "I can get plenty of
drivers, and if I can't, I will hire a bunch of old
women to drive them."

Q. Did that conclude your conversation?

A. Yes. [737]

Q. You testified that following October 10th you
were on the payroll of the Idaho Refining Com-
pany driving trucks under Mr. Stiff?

A. Yes.

Q. Were you working out of Baker all that
time? A. Yes, sir.

Q. How long did that arrangement continue?

A. From October until about the 13th or 15th
of July of 1942.

Q. Did you hear anything in regard to a change
in your work in the early part of January?

A. Yes, sir.

Q. What did you hear?

A. Mr. Stiff informed us that the Inland Em-
pire Company was going to quit operating trucks
and the Idaho Refining Company was going to take

(Testimony of Loren R. McBride.)

them over right away. Did I say October or January?

Q. You said January.

A. No, that was what took place in October.

Q. Well, what occurred in January?

A. In January Mr. Stiff informed us drivers that we were going to move the trucks up to work out of Pocatello and we would be stationed in Gooding, Idaho.

Q. Would you state about what time in January you first heard this? [738]

A. Approximately the first part of January.

Q. Did you get the trucks ready?

A. Yes, sir.

Q. Do you recall any conversation with Mr. Stiff immediately prior to your leaving?

A. Yes, sir.

Q. Where did this conversation occur?

A. It happened in Mr. Stiff's service station in Baker.

Q. About what time was it?

A. Time of day?

Q. Well——

A. It was just before the middle of January along about the 11th or 12th of January.

Q. Who else was present?

A. There were four of we drivers there.

Q. Who were these drivers?

A. Lester Peck was one—I will have to think a minute—Dewey Ray was another. I can't think of the other one now.

(Testimony of Loren R. McBride.)

Q. There was one more driver?

A. Yes, there was four of us.

Q. Who was employing these drivers at that time?

A. They had been on the Inland Empire Refining Company—we went on the Idaho Refining Company at that time in January.

Q. Had they been doing the same sort of work you had been doing out of Baker? [739]

A. Yes, sir.

Q. And were being paid by the Idaho Refining Company? A. Yes.

Q. And working under the direction of Mr. Stiff? A. Yes, sir.

Q. Tell us what conversation took place at the time.

Mr. Moyle: We object to that on the ground it is two or three months after the discharge of the drivers referred to in the complaint.

Mr. Penfield: It isn't specifically alleged in the complaint.

Trial Examiner Riemer: Overruled. Off the record.

(Discussion off the record.)

Q. (Mr. Penfield) Will you tell us what occurred in this conversation?

A. With Mr. Stiff?

Q. Yes. A. Mr. Stiff——

Mr. Moyle: My objection goes to the whole line.

Trial Examiner Riemer: Yes, let the record

(Testimony of Loren R. McBride.)

show a standing objection to the entire line of inquiry and an exception to my adverse ruling.

Q. (By Mr. Penfield) Go ahead.

A. Mr. Stiff had a long distance call and after he had the conversation he turned to us and said he had talked to Mr. [740] Gilbert Moyle at Pocatello and he said we were to come from Jerome to Gooding and work out of Pocatello and our pay was to be \$175 a month. He said he didn't want to pay different wages to us than he did the ones up here in Pocatello. Incidentally, we were drawing union pay out of Baker. This other arrangement wasn't union pay. Mr. Stiff informed us Mr. Moyle said that we were not to mention union in any way, shape or form and not to associate with them—with the drivers at Pocatello in that capacity.

Q. Did he say anything else?

A. That's all.

Q. Did he refer to any difficulties with the union? A. I don't understand.

Q. Did he refer to any difficulties he had had with the union? A. Yes, sir.

Mr. Moyle: I object to that as leading and suggestive.

Trial Examiner Riemer: Overruled.

Q. (By Mr. Penfield) Go ahead.

A. Mr. Stiff told us that Mr. Gilbert Moyle said that he had had some trouble with the laborers in the union capacity, and he didn't want that to occur again. That's why we were instructed to

(Testimony of Loren R. McBride.)

keep our mouths closed about union wages and affairs and various points of the union.

Q. Did that conclude the conversation? [741]

A. Yes, sir.

Q. Did you proceed to Gooding after that?

A. Yes, we agreed to that.

Q. You say you agreed to that.

A. We agreed to accept that wage and come and keep our mouths closed.

Q. Then you proceeded to Gooding?

A. Yes.

Q. How many drivers? A. Five. [742]

Cross Examination

Q. Did you ever during the period of time you worked for Mr. Stiff personally pull gas out of the Pocatello Refinery? A. Yes.

Q. While you were working for Mr. Stiff?

A. Yes.

Q. And you became acquainted with the Idaho Refining Company truck drivers? A. Yes.

Q. And you knew them while you worked for Stiff and before you went to work for the Inland Empire Refining Company? A. Yes. [751]

Q. And you knew them while you were working for the Idaho Refining Company?

A. In 1941 or previous?

Q. Well, both. A. I did, both.

Q. And you knew them at the same time you were driving for the Husky, did you not?

A. Yes.

(Testimony of Loren R. McBride.)

Q. All the driving you did for the Husky brought you into the territory supplied likewise by the Idaho Refining Company?

A. Yes, and incidentally we hauled to the Idaho Refining Company. [752]

Q. (By Mr. Moyle) Now, when you first came to work for the Idaho Refining Company on October 10, 1941, you belonged to the Union?

A. Yes, sir.

Q. And you were hired by the Idaho Refining Company and were wearing a Union button at that time?

A. Yes, sir.

Q. And from then on until January 15th you made your headquarters in Baker?

A. Yes, sir.

Q. And operated from Baker into the Boise territory?

A. Yes, sir. [753]

Q. At the same time you were hauling into Boise there were trucks coming from the Pocatello area into Boise with other products?

A. Yes.

Q. You met these truck drivers in Boise?

A. Occasionally, yes.

Q. You knew them?

A. Some of them.

Q. And they knew you?

A. Yes.

Q. And they knew you belonged to the Union?

A. Yes.

Q. And up to that time you had just as much opportunity to discuss Union matters with them if you desired?

A. I did.

Q. And nobody had ever restrained or restricted

(Testimony of Loren R. McBride.)

you or made any suggestion to you that it would be against the wishes of the management if you discussed union matters with them? A. No.

Q. Did Mr. Moyle say what he did to you in Boise joking with you? A. What?

Q. Was he in a jovial mood?

A. Well, he canned all the drivers. [754]

Q. I am not asking you whether or not he canned all the drivers, I am asking you whether when you had this conversation with Mr. Moyle in Boise in the fall of 1941, were you and Mr. Moyle joking with each other—kidding?

A. No, sir, and by my answer I feel he meant what he said.

Q. You don't think he was kidding when he said, according to your statement, "I will get some old women if necessary"—you thought he was serious? A. Why, sure.

Q. And he wasn't joking or kidding with you?

A. No.

Q. Was anybody present then.

A. There were men in the plant. I don't know that they heard.

Q. Who were in the plant?

A. Well, Roy Williams for one and Mr. Cornia, one of the drivers.

Q. Is that Roy Williams who worked for the Idaho or the Roy Williams who worked for the Inland? A. He worked for the Idaho. [755]

FRANK L. COPENING

was called as a witness by and on behalf of the Respondent, being first duly sworn, and testified as follows:

Direct Examination

Q. (By Trial Examiner Riemer) State your name, please. A. Frank Copening.

Q. Where do you live, or where are you stationed now? A. Camp Callan, California.

Q. You are a Captain in the United States Army at the present time, I understand?

A. Yes, sir. [763]

Q. Since when?

A. I have had my commission since June 29, 1935.

Q. When did you enter into active service in the army? A. June 10, 1942.

Q. Prior to June 10, 1942, where were you living? A. Pocatello, Idaho.

Q. For what period of time had you been living in Pocatello? A. From December 1, 1940.

Q. Until your entrance into the Army?

A. Yes, sir.

Q. Prior to December 10, 1940, where did you live? A. Boise, Idaho.

Q. How long had you lived in Boise?

A. Since June 1, 1938.

Q. Have you heretofore been employed by the Idaho Refining Company? A. I have.

Q. When did you enter into the employ of that company? A. June 1, 1938.

Q. At what point? A. At Boise, Idaho.

(Testimony of Frank L. Copening.)

Q. And in what capacity?

A. As a salesman.

Q. As a salesman, did you have any supervisory powers? A. I did not. [764]

Q. While you were a salesman for the Idaho Refining Company where did you live?

A. At Boise, Idaho.

Q. How long did you occupy that position and live in Boise? A. Until December 1, 1940.

Q. While you were living in Boise, Idaho, did you become a member of the Idaho Refining Company employees—

Trial Examiner Riemer: Call it the association, we will understand.

Q. (By Mr. Merrill): All right, the association? A. Yes, I did.

Q. Do you understand what I mean by the association—the labor association? A. I do.

Q. When did you become a member of this association?

A. As I recall, shortly after I started working for the company.

Q. Was that before you came to Pocatello to live? A. It was.

Q. While you were living in Boise did you ever have occasion to visit Pocatello?

A. On occasions.

Q. During that period of time did you have occasion to attend any of the meetings of the employees of the Idaho [765] Refining Company, or this association? A. Yes, I did.

(Testimony of Frank L. Copening.)

Q. How many? A. One.

Q. Which meeting did you attend?

A. I attended the meeting when Mr. Rosqvist talked to the employees.

Q. Do you remember about when that was?

A. Well, to the best of my recollection it was the latter part of 1938 or the first part of 1939.

Q. In Pocatello? A. In Pocatello.

Q. Have you been here during the hearing?

A. Yes, I have.

Q. Is that the meeting to which several witnesses have referred, if you know?

A. I believe it is the meeting, yes.

Q. How did you happen to be present at that meeting?

A. Well, on occasions I came to Pocatello. My territory was as far as Burley and I would be called in and I happened to be in on that occasion and they informed me there was a meeting in the office—in talking with the boys—so I drove out that evening and attended the meeting.

Q. Did you come especially for that meeting, or attended as an incident of your being here? [766]

A. An incident of my being here.

Q. Well, relate just what occurred at the meeting.

Trial Examiner Riemer: I understand the witness was a salesman at that time.

The Witness: Yes, sir.

Q. (By Mr. Merrill): And at that time I understand you had no supervisory powers whatever?

(Testimony of Frank L. Copening.)

A. That is correct.

Q. All right, explain the happenings of the meeting, Mr. Copening.

A. Well, as I recall, the meeting took place in the evening sometime between 7:30 and 8:00 o'clock and I arrived in the office, and there were quite a number of the employees there and we met in one of the front offices and Mr.——

Q. At this point could you give us an estimate of the number of the employees that were there?

A. Well, I would say between 40 and 45.

Q. And where did you meet?

A. In the front office.

Q. The front office of the Idaho Refining Company—on the property?

A. On the property, yes.

Q. Who aside from the employees came into the meeting? A. Mr. Webb. [767]

Q. Who was Mr. Webb?

A. He was secretary of the company.

Q. Where is he at the present time?

A. He is in the Army.

Q. Now, tell me who else was there aside from the employees.

A. There was Mr. Webb and Mr. Rosqvist and one other gentleman.

Q. Do you know who was with Mr. Rosqvist?

A. I don't recall his name.

Q. Then what happened?

A. Well, Mr. Webb introduced Mr. Rosqvist and the other gentleman and told us that they were

(Testimony of Frank L. Copening.)

there to explain the union, and he requested we give our attention to them and it was immaterial to him what action we took—we could join or we could not join.

Q. You could what?

A. We could join or we did not have to join—that the meeting was held at the request of Mr. Rosqvist, and to pay attention to what he had to say.

Q. Did Mr. Webb say anything about the members exercising their own free agency in that matter?

A. He said whatever we did was up to us.

Q. And what did Webb do ?

A. He left the meeting.

Q. Then what happened? [768]

A. Mr. Rosqvist took the floor and talked to us.

Q. Did the other gentleman speak, if you remember?

A. I don't recall that he did. However, he may have.

Q. And how long did Mr. Rosqvist speak?

A. I would say thirty minutes.

Q. Following his talk, were there questions?

A. He asked us if we had any questions.

Q. And what was said?

A. There was some questions asked him.

Q. Then what occurred?

A. He left the meeting and there was a general discussion among those present.

Q. Following the discussion, what occurred—just a moment, when he left the meeting did the other gentleman you referred to who was with him leave?

A. Yes, they did—both of them left.

(Testimony of Frank L. Copening.)

Q. After they left, was there anyone in the meeting other than the employees of the company?

A. There was not.

Q. Then what occurred after Mr. Rosqvist and his companion left and a discussion was had among the members?

A. We voted as to whether or not we wanted to join the union.

Q. Do you recall the result of that vote?

A. It was unanimous that we did not. [769]

Q. Was there some for joining, if you recall—I believe some witness said two or three—

A. Well, it was practically unanimous. I believe there was one or two or perhaps three votes in favor of a union.

Q. Who presided at the meeting?

A. Well, I can't recall at this time because it was the first meeting I had attended and my trips to Pocatello had been so infrequent that I didn't know them very well.

Q. State whether or not Mr. Webb made any statement in substance or effect that it wasn't necessary that you join any union because the company had an association or that there was an association there that they could join if they wanted to?

Mr. Penfield: We object to that as a very leading question.

Mr. Merrill: Well, I am directing the witness' testimony to some testimony heretofore introduced. It is necessary to be somewhat leading.

Trial Examiner Riemer: Overruled.

(Testimony of Frank L. Copening.)

Mr. Leicht: I don't think that that is a very good quotation of the testimony.

Trial Examiner Riemer: Read the question.

(Last question read by reporter.)

Q. (By Mr. Merrill): And that the company could do as much for them as a union? [770]

A. I recall no such statement by Mr. Webb.

Q. Either in substance or effect?

A. That is correct.

Q. Following that meeting I assume you went back to Boise? A. The next day.

Q. Did you continue your membership in the association? A. I did.

Q. Then you came to Pocatello, I understand, in the fall of 1940? A. December.

Q. And when you came to Pocatello, what position did you assume at the Idaho Refining Company? A. I was promoted to Secretary.

Q. When did you assume the office of Secretary?

A. December 10, 1940.

Q. And held the office until——

A. June 10th of this year.

Q. 1942? A. 1942.

Q. Now, during that period of time did you maintain your membership in the association?

A. I did.

Q. Did you ever attend any of the meetings?

A. I did not.

Q. Did you ever attend any of the committee meetings? [771] A. I did not.

Q. Did you ever take any part in the activities of this association? A. No, sir.

(Testimony of Frank L. Copening.)

Q. Why did you maintain your membership?

A. Well, I had started as a member and I maintained it for the benefits.

Q. To what benefits do you make reference?

A. To the sick benefits.

Q. Had you continuously paid your dues?

A. Yes, sir.

Q. And I understand there were certain sick benefits available to those who had paid their dues?

A. There were.

Q. Now, during that period of time, while you were secretary, did you ever have any contacts with the association or its members or committees—

A. No.

Q. In any business way? A. No, I did not.

Q. To your knowledge, was there ever any attempt on the part of the officers of the company or yourself to in any sense influence anything that that association or its members did or attempted to do?

Mr. Penfield: I object to that on the ground it calls [772] for a conclusion of the witness.

Trial Examiner Riemer: I will permit it, as I have permitted similar questions before, and overrule the objection. I will be consistent and overrule the objection again. Read the question.

(Last question read by reporter.)

A. There was not.

Q. (By Mr. Merrill): Now, your duties as secretary, did you remain constantly in the office or were you outside?

A. I was outside the office quite a good deal.

(Testimony of Frank L. Copening.)

Q. What percentage of your time would be outside the office?

A. I would say at least two days a week.

Q. And where would you be?

A. All over the state.

Q. How did you travel? A. By car.

Q. Did you know the drivers of the trucks?

A. I did.

Q. Did you intercept them or meet them on your travels on the highways? A. Yes.

Q. Relate what you saw at various times?

A. Well, without exception when I would leave Pocatello and leave for Boise or Salmon City or West Yellowstone or [773] Salt Lake, I would pass our trucks. Very often I would wave my hand and stop the truck and ask the driver where he was going or where he had been, and I would see them stopped in front of cafes along the road and when I would see one of our trucks I would stop and go in. I always stopped when I saw them changing a tire or if there was any trouble with the truck, and I would talk with them, and on some occasions I would tell them to hurry back to the plant, that we needed the trucks, and on other occasions I would tell them when I passed them to slow down and on some occasions I would ask them why they were in the cafe or why they were stopped, that we needed the trucks at the plant and to get back.

Q. What observations have you made, if any, of the various drivers visiting hamburger stands, beer stands and other places?

(Testimony of Frank L. Copening.)

A. We had some trouble with the drivers stopping too long in hamburger stands and we told them at one of our meetings that we wanted them to eat their breakfast or dinner before they reported to work so it wouldn't be necessary for them to stop after they had only traveled 25 or 50 miles from the plant.

Q. What, if you know, would occur after they had spent time in these places?

A. Well, they would gun their truck and try to make up lost [774] time.

Q. What do you mean by gunning the truck?

A. Well, operate it at a high rate of speed.

Q. What is the fact as to whether or not you had criticized drivers for that practice?

A. I had criticized them for that on the road and we had also taken it up at our meetings.

Q. To what meetings do you refer?

A. The meetings we held with the drivers.

Q. How often would these meetings occur?

A. Well, I would say the meetings occurred approximately one every two months, sometimes maybe a little oftener, and sometimes not quite so often. It depended a good deal on the occasion that required the calling of the meeting.

Q. At the meetings, who were usually present?

A. Well, the drivers that were in and available for the meeting, and Mr. Moyle was there, and Mr. Kermit Rice attended most of the meetings and I attended most.

Q. What was the purpose of the meetings?

(Testimony of Frank L. Copening.)

A. To instruct the drivers in what we wanted them to do, calling their attention to certain facts and sometimes we had complaints from the customers.

Q. Was there a general course of instruction?

A. No, there was not. We talked about several things.

Q. What if anything was ever said at these meetings concerning accidents?

A. Well, that was brought up when we informed them that we were not able to replace trucks when they were wrecked and that it was always a loss suffered by the company regardless of our insurance, and we wanted them to drive carefully, take all the time necessary and to take no unnecessary chances and to handle the truck as if it was their own car so that it would last.

Q. How frequently were the drivers given this warning or advice?

A. I would say that while I was in the office we held the meetings at least every two months—there would be at least six meetings during the year. It could have been six or seven or it could have been five but I would say every two months at least.

Q. Do you recall instances where any specific caution was given or anything said about the danger of continuing the practices that you have mentioned?

A. Yes, we have told the drivers that while we like them all and we were apparently getting along very nicely, and their trucks were doing a good job,

(Testimony of Frank L. Copening.)

we couldn't stand to have wrecks because of the fact the law required us to keep our trucks insured, and without insurance, regardless of the equipment we had or the drivers, we couldn't roll the trucks. [776]

Q. Do you recall any instance where anything was said to the drivers at any of these meetings or individually touching the possible cancellation of the insurance if these accidents continued?

A. It was discussed at the meeting. I recall one definite occasion after a serious accident we had.

Q. Where? A. At Malta.

Q. Who was the driver? Mr. Henricksen?

A. I think that was his name.

Q. All right.

A. That the insurance wouldn't let us have very many of those wrecks, that they would cancel us out and that we just could not have them.

Trial Examiner Riemer: Is that what you told the truck drivers?

The Witness: Yes, sir, we just could not have the wrecks, it would put us out of business if we didn't have insurance, and the safety measures and the speed of trucks was discussed at all of those meetings, whenever we met. Regardless of whatever else we had to talk to them about, we stressed that.

Q. What type of insurance did the company carry during the two years preceding November, 1941?

A. We had a public liability and property damage, and fire [777] and theft——

(Testimony of Frank L. Copening.)

Q. Collision?

A. Yes, and comprehensive, and the property damage had a deductible feature.

Q. What was the deductible feature?

A. \$100 on trucks and \$100 on trailers.

Q. Explain more fully what that would mean if there was an accident to the truck and the trailer.

A. When the truck was damaged, the first hundred dollars of the damage was paid by the company, and the balance——

Q. You mean by the Idaho Refining Company?

A. Yes, and the balance was supposed to have been paid by the insurance company.

Q. Was that collision insurance?

A. That was property damage, to our trucks. We had collision insurance protecting the property of other people.

Q. That was in the same policy?

A. It was all in the same policy.

Trial Examiner Riemer: That is, the collision insurance was also \$100 deductible—had a \$100 deductible clause? Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (By Mr. Merrill): Mr. Copening, assume there was an accident in which a company truck and a company trailer [778] attached to the truck were each damaged in excess of \$100 to each, which damage was due to a collision or a contact with some object or other item of property, what would be the requirement—what were the requirements of the policy touching on the loss?

(Testimony of Frank L. Copening.)

A. If the loss amounted, we will say for example, \$300, they would deduct \$200—\$100 for the truck and \$100 for the trailer and we would be entitled to \$100.

Q. That is, you assume the loss on the automobile would be \$50, or the truck, and the loss on the trailer would be \$200, what would be the deductions that would be necessary for the company to pay?

A. On the truck we would pay the \$50, on the trailer we would pay the first hundred, and be entitled to reimbursement.

Q. For the balance?

A. For the balance.

Q. When accidents occurred, what did you do with reference to making reports?

A. Well, when the accident would happen, they would call up on the phone, the truck driver would if he could get to a phone, or at least it was brought to my attention, and I would call Mr. Turner.

Q. Who is Mr. Turner?

A. Mr. Turner is our insurance agent here in Pocatello.

Q. What are his initials—R. S. Turner? [779]

A. R. S. Turner. The usual procedure was, he would say, "Who is the driver involved?" And I would tell him and he would say, "Have him come down to my office" or "Is he out at the plant?" And if he was out at the plant he would come out and interview the driver out there, and from then on the adjuster would come out and they would ad-

(Testimony of Frank L. Copening.)

just the loss, decide on whether it would be fixed in our shop or taken to some other shop, and those details on adjustments from then on were handled by Mr. Moyle. [780]

Q. Who was carrying the insurance up until November 13, 1941—along in there—1941? [785]

A. The Firemen's.

Q. The Firemen's?

A. The Firemen's Insurance Company.

Q. Was the Metropolitan Insurance Company likewise interested?

A. Yes, there are two names.

Q. A joint policy?

A. Yes, a joint policy. We always referred to it as the Firemen's.

Q. Was that policy discontinued?

A. It was.

Trial Examiner Riemer: Excuse me for interrupting. Are there two policies involved, a collision policy and a property damage policy or did one cover both?

The Witness: One covers both.

Trial Examiner Riemer: Will you clear that up?

Q. (By Mr. Merrill): Do you know the names of the companies that issued the policy to which you make reference?

A. Well, I know it if I heard it.

Q. Do you know whether or not it was the Firemen's Insurance Company of Newark, New Jersey?

A. That I would say is the name of it.

(Testimony of Frank L. Copening.)

Q. And also the Metropolitan Indemnity Company, or some such name as that?

A. There were two names on the policy. [786]

Q. I hand you Board's Exhibit 22 and ask you to read the names on the bottom of that.

A. Firemen's Insurance Company, Newark, New Jersey, and Metropolitan Casualty Company of New York, New York.

Q. Are those the companies that carried that insurance? A. They are.

Q. Now, did the one policy issued by those two companies cover all the items of loss to which you have referred, namely, collision, property damage, fire and theft and public liability and comprehensive?

A. Yes, the one policy covered them all.

Mr. Leicht: It seems to me the insurance policy itself is the best evidence.

Mr. Merrill: Yes, we will do what we can with that later.

Q. (By Mr. Merrill): Does the company, if you know, have that policy now?

A. No, that policy was returned as far as I know.

Q. To the issuing agent?

A. To the agent.

Q. When was it returned?

A. Well, sometime between the 15th and 20th of November, I believe.

Q. Of what year? A. 1941. [787]

Q. Now, I call your attention to Board's Ex-

(Testimony of Frank L. Copening.)

hibit 22 and ask you if you have ever seen that before? A. Yes, I have.

Q. When was it first called to your attention?

A. It was laid on my desk November 10th.

Q. What year? A. 1941.

Q. What did you do with it?

A. I immediately after reading it took it in to Mr. Moyle.

Q. Had you heard any warnings that such cancellation as referred to in the telegram might occur?

A. I had heard some—something about a cancellation if our losses continued.

Q. Who had given you that information?

A. Well, our agent, Mr. Turner.

Q. R. S. Turner of Pocatello?

A. Yes.

Q. What had he said to you? [788]

A. Well, on several occasions when I called up Mr. Turner to report a loss, he would say, "This has got to stop or you will be without insurance." He said, "You can't do this like you are, something has got to be done", or words to that effect on three or four or five occasions at least.

Q. Were there ever any comments made touching the discharge of drivers?

A. He had mentioned that if our drivers were the cause of our accidents we should get rid of them.

Q. When this telegram came, I understand you took it in to Mr. Moyle?

A. As I recall, I received it first.

Q. Then after it was taken in to Mr. Moyle,

(Testimony of Frank L. Copening.)

what was the next thing if you remember that occurred with reference to it?

A. I believe that I called Mr. Turner and he said he had received one too, and I said, "What are we going to do?" And he said, "I don't know." He said, "You are in a tough spot." [789]

Q. (By Mr. Merrill): Then what?

A. Well, Mr. Gilbert Moyle and I sat down and discussed the situation and I advised him that we could not keep our trucks on the road without insurance and something had to be done, and be done awfully quick.

Q. At this point, state why you could not keep them on the road without insurance.

A. It is against the I.C.C. regulations to have your trucks on the highway without insurance.

Q. Unless you can carry the insurance?

A. There is a provision that you can carry your own insurance if your financial statement is sufficient to support it.

Q. Was the financial statement of the Idaho Refining Company sufficient to meet the requirements of the I.C.C. rule?

A. No, we could not have met the requirements.

Q. And if you had attempted to operate those trucks without insurance, what would have been the result?

A. Well, we would have been just put out of business. We couldn't operate them without insurance.

(Testimony of Frank L. Copening.)

Q. Then what—did you and Mr. Moyle further discuss the matter?

A. Oh, we discussed it there all day—all morning.

Q. Then what did you do?

A. As I recall, Mr. Gilbert Moyle said that he would get in [790] touch with Mr. Henry Moyle and see what we could do.

Q. What office did Mr. Henry Moyle hold in the company?

A. Mr. Henry Moyle was the vice-president of the company.

Q. And general counsel, was he not?

A. And general counsel, yes.

Q. Was contact made with him?

A. Contact was made with him and he was in Pocatello on the 13th.

Q. Of what month? A. November, 1941.

Q. What time did he come to Pocatello on that day?

A. Well, as I recall, I first saw him about 9:30, or it could have been a little later than that, even, I am not just sure whether it was in the morning or the afternoon.

Q. How long was he out at the company's plant if he came out there?

A. Oh, he was there, as I recall—he was there when I left. I would say he was there three or four hours.

Q. While he was there did you have any conferences touching this matter? A. Yes, we did.

(Testimony of Frank L. Copening.)

Q. Who engaged in those conferences?

A. Mr. Henry Moyle, Mr. Gilbert Moyle and myself, part of the time.

Q. During this period of time had you made inquiry as to [791] whether or not you could replace your insurance?

A. I didn't make any personally.

Q. Do you know whether others had?

A. I understood that attempts were made, and being made to obtain other insurance.

Q. And that was attempted by whom?

A. Mr. Henry Moyle and Mr. Gilbert Moyle.

Q. But you personally didn't make any attempts? A. I made no attempts, no, sir.

Q. Did they make any comment to you in these conferences as to their ability or inability to get other insurance?

A. They said they were having a tough time to get it.

Q. Then what was next done or determined on if you recall in this conference?

A. Well, after discussion back and forth—I was taking care of my details and coming in and out—Mr. Henry Moyle informed me that to make ourselves, to put ourselves in such a position so that we could get insurance we would have to get a new crew of drivers, and said the drivers would have to be discharged.

Q. Then what was done?

A. The drivers were discharged.

(Testimony of Frank L. Copening.)

Q. When was the determination to discharge the drivers arrived at or made?

A. On November 13, 1941. [792]

Q. At about what time, if you recall it?

A. I would say in the afternoon, as I recall.

Q. Mr. Copening, did membership in any union organization or Teamsters' Local 440 or any other organization have anything whatever to do with the determination to discharge the drivers?

A. It did not.

Q. Had there been any discussion of any kind or character touching their membership in any of those organizations?

A. Not as far as I know.

Q. Was there any such discussion at any time with you by any other officer of the company?

A. No, sir.

Q. Or anyone connected with the company?

A. No, sir.

Q. Would you say then that union membership had absolutely nothing whatever to do with the discharge of these drivers or the determination to discharge them?

Mr. Leicht: He has already answered it—I object.

Trial Examiner Riemer: Overruled. Answer it again.

A. It did not.

Q. (By Mr. Merrill): What was the sole reason for the discharge?

A. To enable ourselves to get insurance and keep

(Testimony of Frank L. Copening.)

the company going, keep our trucks on the road, without which we [793] would have been out of business.

Q. Now, what next then occurred after you had arrived at this decision to discharge the employees or the truck drivers, how was it handled or what was then done?

A. Kermit Rice was called and advised the truck drivers would have to be fired.

Q. Was he given the reason?

A. We told him that our insurance was cancelled out.

Q. Who told him that?

A. I think I told him and I said, you will fire the truck drivers immediately. That was the 13th. And I said, "We will pay them to the 15th", which was payday. But he said, "Well, some of the drivers are out of town", and I said, "Well, send for them and deadhead them in and we will cut them off just as quick as we can, because we only have until the 17th to get insurance, and we have to keep the trucks on the road." I told him I would stay in the office that night until 9:30 or 10:00 o'clock and in case any truck drivers came in I would tell them they were being discharged.

Q. Did they come in that night?

A. I believe three came in that night but I am not just positive of that. Some of them came in, however; Mr. Rice discharged them, but I believe three came to my office.

Q. That night, on the 13th?

(Testimony of Frank L. Copening.)

A. That night, on the 13th. [794]

Q. Do you recall who they were?

A. I don't recall the names, no.

Q. When did you commence making out their checks?

A. The checks were started the morning of the 14th.

Q. At what time?

A. I would say about 8:30.

Q. A.M.? A. In the morning.

Q. Who had the duty of making out the checks?

A. Our treasurer.

Q. Who signed them?

A. I could sign checks and the treasurer could sign them and Mr. Moyle could sign them—counter-sign them.

Q. Did you countersign any of these checks?

A. I would say I countersigned some of them, yes.

Q. And on the morning of the 14th did you see any of the truck drivers?

A. Yes, I saw some truck drivers the morning of the 14th.

Q. Where did you see them?

A. I saw them standing out in front of the office and by the new garage.

Q. Did any of them come in the office for their checks, if you know?

A. I believe I recall one or two of them in the office.

(Testimony of Frank L. Copening.)

Q. Did they come in your office or some other office for [795] their checks?

A. None of them came to my office. They came to the treasurer's office. That was right in front of the building by the entrance. Mine was in the back.

Q. Do you recall whether or not any of the employees or truck drivers came in to see you that morning?

A. I don't recall any of them coming into my office that morning. [796]

Q. Now, Captain Copening, I believe it was a policy of the company to permit gas discounts or discounts for gas and oil purchased? A. Yes.

Q. To whom were those discounts allowed?

A. To all employees.

Q. Did membership in the association have anything to do with the allowance of the discount?

A. No, it did not.

Q. Did membership in the association entitle a member to any greater or different courtesy from the company than if they were not members?

A. No, sir.

Q. Now, some testimony has been introduced touching drink dispensers, cigarette machines, I believe, and so forth. Did the company have anything to do with those items? A. No.

Q. To whom were the profits payable from those machines? [805]

A. I understand the association.

(Testimony of Frank L. Copening.)

Q. But are you able to state positively whether or not the company had anything to do with that?

A. The company had nothing to do with it.

Q. Either in putting them in or in the results of them?

A. That is correct.

Q. Or the ownership of them?

A. No, the company did not own them.

Q. Did you know a man by the name of Archibald?

A. Yes, sir.

Q. Who was he?

A. He was a mechanic in the garage.

Q. For what period of time did he work?

A. Most of the period of 1941.

Q. Is the time of an employee kept on the records of the company?

A. Yes, sir.

Q. Does the same become a permanent record?

A. Yes, sir.

Q. Have you checked the records of the company with respect to the time off by Leo Archibald during the period he worked for the company?

A. I have.

Q. Did you make a compilation of the time he was off?

A. I did. [806]

Q. Do you have in court the records of the company from which you made the compilation?

A. Yes, sir.

Q. Are they here available for examination?

A. Yes, sir.

Q. When you made that compilation did you reduce it to writing?

A. Yes, sir.

(Testimony of Frank L. Copening.)

Q. I am handing you what has been marked as Respondent's Exhibit 2, and ask you what it is?

A. It is a recap of the period that Leo Archibald did work from January 25, 1941, to November 13, 1941.

Q. Is that an accurate statement of the number of days during that period of time that he did not work?

A. Yes, sir.

Mr. Merrill: We offer in evidence this tabulation, and we will state to you that the books of the company are here marked with book marks in each instance so you can verify that statement if you care to do so.

Mr. Leicht: When was this made; just recently?

Mr. Merrill: Yes, yesterday, or that is, during the trial.

Trial Examiner Riemer: It is offered in evidence. Is there an objection?

Mr. Penfield: No objection. [807]

Trial Examiner Riemer: It may be admitted in evidence marked in evidence Respondent's Exhibit 2.

(Whereupon the document hereinabove referred to, previously marked Respondent's Exhibit 2, was received in evidence.)

(Testimony of Frank L. Copening.)

RESPONDENT'S EXHIBIT No. 2

LEO ARCHIBALD

Period		Days Off
Jan. 25-31, 1941		1 Sunday
Feb. 1-15, 1941		1 Sunday
Feb. 16-28, 1941		1 Sunday
Mar. 1-15, 1941		1 Sunday
Mar. 16-31, 1941	Mar. 23-24-25-30	4 Sun.-Mon.-Tues.-Sun.
April 1-15, 1941	Apr. 6- 8-13	3 Sun.-Tues.-Sun.
April 16-30, 1941		0
May 1-15, 1941		1 Sunday
May 16-31, 1941	May 18-20-30-31	4 Sun.-Tues.-Fri.-Sat.
June 1-15, 1941	June 1 - 2	2 Sun.-Monday
June 16-30, 1941		1 Sunday
July 1-15, 1941	July 4-5-6	3 Fri.-Sat.-Sunday
July 16-31, 1941	July 28th	1 Monday
Aug. 1-15, 1941	Aug. 10th	1 Sunday
Aug. 16-31, 1941	Aug. 17, 24, 31	3 Sunday (all three)
Sept. 1-15, 1941		1 Sunday
Sept. 16-30, 1941		1 Sunday
Oct. 1-15, 1941		2 Sunday (both)
Oct. 16-31, 1941	Oct. 19th-26th	2 Sunday (both)
Nov. 1-13, 1941	Nov. 2,-9-10-11th	4 Sun.-Sun.-Mon.-Tues.

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Q. (By Mr. Merrill): I am now handing you Respondent's Exhibit 2, which has been admitted in evidence, Captain Copening, and ask you to state from that exhibit how many Sundays and how many other days Mr. Archibald was not at work during the period of time he was working for the company?

A. He was absent 37 days, and as I got them here, 25 of the days were Sundays and the other 12 days were other days of the week. [808]

(Testimony of Frank L. Copening.)

Q. I believe you mentioned that he received 50c an hour. [809] I would like to have you examine one of the books of the company here in the courtroom and advise if that shows the rate and refreshes your recollection?

A. Well, that is the time sheet on Leo Archibald, shows his rate of pay; his rate of pay is 60c per hour.

Mr. Penfield: During what period?

A. (Continuing): That is the period May 1 to May 15 I am giving you now.

Q. (By Mr. Merrill): 1941? A. 1941.

Q. Look at some other.

A. Well, January 1st to January 15th—no, let's see,—the first part of January, his first check in January was figured on a basis of 50c.

Q. Can you tell when the increase occurred?

A. It increased the first of March.

Q. Of what year? A. 1941.

Q. And thereafter it was how much?

A. 60c per hour. [810]

Q. Do you remember a man by the name of Wayne Douglas? A. I do.

Q. Who was he? A. He was a truck driver.

Q. For the company?

A. Yes, for the Idaho Refining Company.

Q. Do you recall a conversation that you had with him touching any accident?

A. Well, I had several conversations with him.

Q. What was the first one touching any matter pertaining to this inquiry?

(Testimony of Frank L. Copening.)

A. After he had had his wreck over in Weiser, sometime after that he came into the office and informed me that he [811] had been laid off.

Q. When was that, if you know?

A. Well, I would say that was sometime in November.

Q. That he came into the office?

A. Into the office, yes.

Q. When did he have his wreck at Weiser?

A. It was in October, as I recall, 1941.

Q. What was the conversation you had with Mr. Douglas?

A. Well, he said he wanted to go back to work, that he liked working for the company, and I told him that he had had a serious accident over there and it was a wonder that he hadn't been killed and that he had a bad record on that account, and that I doubted that he could get a job driving.

Q. What did he say, if anything?

A. Well, he said that it was too bad that he had had it, but he would like to go to work again.

Q. Did he explain to you the character of the accident?

A. He mentioned to me that he was—should not have been in the town, that he was off his route and also said that he was making a turn too fast, as I recall. I am not sure just exactly.

Q. Of what did the accident consist?

A. He tipped a truck over loaded with gasoline and it run all down the street.

Q. A loss of gasoline? [812]

(Testimony of Frank L. Copening.)

A. A loss of the gasoline and an expensive wreck.

Q. Do you recall a little more definitely when you had this conversation with him?

A. It was either—I had several with him. I would say that it was the latter part of November.

Q. Of what year?

A. 1941, as I recall on one occasion, I think he had just received his check.

Q. Was it on that occasion he discussed with you continued employment with the company?

A. He discussed with me on that occasion and also on subsequent occasions.

Q. Well, on that particular occasion did you tell him why he had been discharged?

A. Well, I don't recall just the exact words, but his wreck was discussed. [813]

And I told him that that wreck would make it hard for him to get a job driving, because he admitted to me that it was negligence that caused it, and I told him that it was too bad. We both agreed that it was. I said, "We just could not hire you, Wayne, on that account."

Q. Was that conversation after the discharge of the group of truckdrivers on November 13, 1941?

A. As I recall, it was very shortly after.

Q. In that conversation, state whether or not you told Mr. Douglas in substance or effect that he was fired the same as the others were fired, referring to this other group?

A. I don't recall that statement. I would say that I did not make the statement.

(Testimony of Frank L. Copening.)

Q. What reason did you ascribe to his being fired at that time? A. His wreck at Weiser.

Q. Had you ever mentioned unionism to him?

A. No, sir.

Q. Had you ever referred to or discussed the item of unionism? A. No, sir.

Q. Some testimony was introduced touching on some talk with service station employees, touching membership in labor unions. I will ask you what are the facts with reference to that matter? Did you ever have any conversation with any service station attendant touching labor unionism, or membership of any employee of the company in a union?

[814]

A. I did not.

Q. Did the subject at any time ever come up between you and any service station attendant anywhere in the territory?

A. I don't recall it ever coming up.

Q. If it had come up, do you think that you would have recalled it?

A. I might—I think that I would.

Q. Did you ever have a discussion with one Merlin Bowman at any time? A. I did.

Q. When? A. My office, in my office.

Q. When was that?

A. Sometime the latter part of November, 1941.

Q. What was that discussion about?

A. He had been hired as a truck driver and was over in my office and I asked him—I asked him his

(Testimony of Frank L. Copening.)

marital status, where he had worked, and his experience, and asked him if he had driven trucks.

Q. What did he say?

A. He answered my questions for me.

Q. Now, was there anything in that conversation about any membership in any labor union or labor organization? [815]

A. No.

Q. Did you ever discuss that point with Mr. Bowman?

A. I did not.

Q. When a prospective employee came to the office to discuss employment, was there an application blank filled out?

A. Yes, sir.

Q. I hand you what has been marked as Respondent's Exhibit No. 3, and ask you what that is, Mr. Copening, if you know?

A. That is an application for employment with the Idaho Refining Company.

Q. On whose behalf?

A. Merlin Bowman.

Q. And whose handwriting is the application in?

A. I would say his own.

Q. Mr. Bowman's?

A. In Mr. Bowman's. [816]

Q. Does it bear his signature?

A. It bears his name here at the top.

Q. I call your attention to the date. Is that accurate?

A. March 30, 1940.

Q. Is that an accurate date, or was it 1941 or 1942?

A. Well, I saw him—the only time I saw him was in November, 1941.

(Testimony of Frank L. Copening.)

Q. Well, how do you account for the date being March 30, 1940?

A. I have no way of accounting for that, unless he had applied for work at that time.

Q. But you are sure that that is Bowman's application? A. Yes.

Q. Now, when application was made for employment, state whether or not the questions thereon to be filled out were usually asked by you?

A. Yes, they were.

Q. I note that it states, or asks for nationality, church, lodge affiliations, marital status, and so forth. Were those questions asked all applicants?

A. They were.

Q. I will ask you whether or not there is anything on there touching union affiliations?

A. Well, lodge affiliation.

Q. I said union affiliation?

A. No, no union affiliation that I can see—no.

[817]

Trial Examiner Riemer: What is the answer?

The Witness: No, there is none.

Mr. Merrill: We offer in evidence Respondent's Exhibit 3. [818]

(Testimony of Frank L. Copening.)

RESPONDENT'S EXHIBIT No. 3

APPLICATION FOR EMPLOYMENT

To IDAHO REFINING Co.

Name—Bowman Merlin
 Last Name First
 Date of birth—Oct. 7 1912
 Church—L.D.S. Lodge Affiliation
 Widowed () Divorced ()
 Address—530 East Landen
 Place of birth—Downey, Idaho
 Race—White
 Nationality—English
 Social Security No. 519-01-4261
 Date—Mar. 30, 1940
 Phone
 Male (X) Female () Married (X) Single ()
 Number of dependents—One
 Number dependent children

Education

Name of School	Location	Course	No. Years Attended	Did You Graduate and Degree Received
Elementary School Arimo, Idaho	Arimo, Ida.	General	8	Yes
High School	"	"	"	"
Arimo High School	"	"	2	No
Business School, or College				

(Testimony of Frank L. Copening.)

Application for Employment—(Continued)

Complete Record of Previous Employment

Period Employed		Name and Addresses of Employers	Position Held	Salary Received	Reason for Leaving
From	To				
1	October 1939	Kewanee Coal Co. 427 So. 2nd, Poca., Ida.	Truck Foreman	\$22 wk.	
2	April 21, 1939	Duff Reed Twin Falls, Ida.	Cot Skinner	90c per hr.	Job finished
3	May 1938	Olaf Nelson Landen, Utah.	Truck Driver	60c per hr.	Job finished
4	April 1939	Slim Harrington Pocatello, Idaho	Truck Driver	60c per hr.	Job finished

List Three Business References (Not Relatives)

- 1 Name—Mrs. Robert Sharkel
Address—Pocatello, Idaho
- 2 Name—Mrs. Alfred Hohn
Address—Blackfoot, Idaho
- 3 Name—Bush Motor Co.
Address—Pocatello, Idaho

List Three Character References (Not Relatives)

- 1 Name—Mr. R. T. Hole
Address—McCannon, Idaho
 - 2 Name—Mr. Floyd Dalton
Address—Lava Hot Springs, Ida.
 - 3 Name—Mr. Douglas Fife
Address—Preston, Idaho
- Type of work or position desired—Truck Driver
State your qualifications for position—Have had much experience driving Truck, also have had experience as mechanic. State your general health—Good
Do you have any physical defects?—None
Hobbies or supplemental interests
(For special remarks use reverse side)

(Testimony of Frank L. Copening.)

Q. Mr. Copening, do you know a man by the name of Trevor Moss? A. Yes, sir.

Q. When did you first become acquainted with him? A. The latter part of November, 1941.

Q. Where?

A. In the offices of the Idaho Refining Company.

Q. Did he work for the Idaho Refining Company? A. He did.

Q. For what period of time, if you know?

A. A matter of three or four months.

Q. Do you recall a conversation with him in your office at the time that he made application for employment? A. I do.

Q. Who was present at that time?

A. My recollection is that Mr. Moss, Mr. Rice and myself were present.

Q. Was there a conversation engaged in?

A. Yes, sir.

Q. Between whom was this conversation had?

A. Between Mr. Moss and myself. [822]

Q. Did Mr. Moyle have anything to do in the conversation or take part in it? A. No, sir.

Q. Could you fix that conversation a little more definitely as to the time?

A. Sometime within a day or so of the 15th of November, 1941.

Trial Examiner Riemer: Read the answer, please.

(Last answer read aloud by the reporter as hereinabove recorded.)

(Testimony of Frank L. Copening.)

Q. (Mr. Merrill, continuing) What was the conversation?

A. I asked him who he had worked for, whether he was married, where he lived, what his habits were, and if he had had any wrecks.

Q. Did he answer those various questions?

A. Yes, he did.

Q. I will ask you to state whether or not you or Mr. Moyle asked him any question or said anything about any membership—pardon me—was Mr. Moyle present?

A. Mr. Moyle was not present.

Q. Who was present? A. Mr. Rice.

Q. I will ask you whether or not you or Mr. Rice asked him in substance or effect whether or not he belonged to any trade union or labor union?

A. No, sir, we did not. [823]

Q. Was the subject of trade union or labor unionism mentioned in that conversation?

A. No, sir.

Q. Did you ever talk to Mr. Moss in which any reference was made to unionism?

A. No, sir.

Q. Did you ever talk to Mr. Moss at any time suggesting or saying anything about any local trade union or his membership therein? A. No, sir.

Q. Did you ever inquire whether or not he was a member of any union? A. No, sir.

Q. Did anyone make such inquiries, Mr. Rice or Mr. Moyle or anyone else in your presence?

A. No, sir.

(Testimony of Frank L. Copening.)

Q. Did you know whether Mr. Ross did or did not belong to any union? A. No, sir.

Q. Did it make any difference to you at all when he was making application? A. No, sir.

Q. If he had belonged to a trade union of any kind, would that have made any difference in his employment? A. No, sir. [824]

Q. Were you out at Mackay, Idaho, if you remember at any time, during the month of August or September, 1941? A. I could have been.

Q. State whether or not in about the month of August or September, 1941, you, Frank Copening, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that the respondent, Idaho Refining Company, would not hire or retain in its employment, truck drivers who belonged to the Teamsters Union? A. I did not.

Q. Did you ever make any such comment to such effect at that, or any other time?

A. No, sir.

Q. Or place? A. No, sir.

Q. Did you make such comment at any other time or place? A. No, sir.

Q. I will ask you whether or not since November 14, 1941, you, Frank Copening, either individually as secretary of the Idaho Refining Company inquired of persons, or any person inquiring for employment as truckdrivers with the Idaho Refining Company, or employees hired as truckdrivers, whether they belonged to or had belonged to the Teamsters Union or any other outside labor

(Testimony of Frank L. Copening.)

organization or advised them that the company was opposed to membership of employees in such unions? A. I did not. [825]

Q. Did you inquire of any prospective employee or truckdriver since November 14, 1941, whether or not they belonged to any union? A. No, sir.

Q. Did you advise anyone during that period of time, or at all, that the company was opposed to membership of employees in such unions?

A. No, sir.

Mr. Merrill: You may cross examine.

Cross Examination [826]

Q. Do you know of the company making any inquiries as to what would be necessary to get new insurance before the 10th?

A. Before the 10th?

Q. Yes. A. No, I didn't.

Q. Do you know of any efforts made after the 10th? A. Yes. [838]

Q. When were those efforts made?

A. Well, I personally called Mr. Turner.

Q. Mr. Turner was agent for the company that had the policy?

A. Agent for the company, and I wanted to know if he represented any other companies.

I did that myself. I don't know what Mr. Gilbert Moyle did, but we certainly discussed it on the 10th when we received this telegram. [839]

Q. You have always been a member of the Association since you worked there, have you not?

A. Practically always—from the first month, I

(Testimony of Frank L. Copening.)

believe, or six weeks. I always understood that any employee could get a discount.

Q. It could have been otherwise, could it not?

A. Not to my knowledge.

Q. You testified in regard to these drink dispensers, and you [850] testified that the company—that all the profits went to the Association, is that correct? A. As far as I know, it is.

Q. Well, you know, do you not, that the company makes all the collections for the Association, do they not?

A. What do you mean by collections?

Q. Well, isn't it a fact that when someone wants to buy drinks or get laundry done, he gets that on credit, and then the amounts are turned over to the Association and deductions are made from his payroll?

A. Deductions are made and paid to the Association, yes.

Q. Isn't it a fact that the entire amount is paid to the Association?

Mr. Moyle: The entire amount of what?

Mr. Penfield: The entire amount of these deductions for purchases of these products, and for laundry. Well, perhaps I can straighten it out a little more.

Q. (Mr. Penfield, continuing) It is a fact, is it not, that the Association has a laundry concession and has a bottled drink concession from which they make a profit, and a tobacco concession, also; that is true, is it not?

(Testimony of Frank L. Copening.)

A. Yes, that is true.

Q. And it is also true that the persons availing themselves of the use of these concessions receive credit, is it not?

A. They can get credit for them, yes. [851]

Q. And it is true that the secretary of the Association notes the amount of the expenditures each month on a sheet of paper for each individual—or rather twice a month—then turns that over to the paymaster, is that not correct?

A. I believe that it is correct.

Q. Then the paymaster makes deductions from the wages of each employee and takes the amount that has been deducted and turns that over to the Secretary of the Association, isn't that correct?

A. I believe that is correct, yes.

Q. How much time does the paymaster have to spend on that? A. I don't know.

Q. It takes considerable time, doesn't it?

A. Well, I don't know.

Q. Well, the deductions take some of the paymaster's time?

A. Well, I don't know. I have never heard——

Q. But it is true, is it not, that the company is making the collections for the Association for the credit that has been advanced?

A. They deduct it from the pay and reimburse the Association.

Q. And they turn it over, turn the money over to the Association? A. Yes.

(Testimony of Frank L. Copening.)

Q. And the Association makes all the profit from these concessions? [852]

A. That is correct.

Q. And if the company didn't do that, the Association would have to make these collections, isn't that correct?

A. They would have to operate on a cash basis, I presume.

Q. Either operate on a cash basis, or make the collections independently?

A. Either one, yes. [853]

Q. (Mr. Penfield) You testified concerning Wayne Douglas. Isn't it a fact that you saw Wayne Douglas shortly after the accident?

A. I saw Douglas on several occasions, yes, I would say I saw him after the accident.

Q. Was that near Weiser?

A. No, I would say if I saw him, it was in Pocatello.

Q. And it is true that Douglas went back to work following that accident, didn't he?

A. I think that he did, for a short period of time.

Q. He went back to work for several weeks?

A. I don't know just how long he did work.

Q. He wasn't discharged right at the time of the accident, was he?

A. No, but it wasn't very long after that he was discharged.

Q. Isn't it a fact that the accident occurred on October 16, 1941?

(Testimony of Frank L. Copening.)

A. I believe that is the correct date.

Q. And it is also true that Douglas was not discharged until November 26th?

A. That is possibly the correct date, too.

Q. It is also true that when Douglas came in, you showed him a copy of that telegram that you received from the insurance company?

A. I don't recall showing it to him. [856]

Q. You might have?

A. I doubt that I did. [857]

Q. I understood you to testify that your insurance policy covered the Covey Gas & Oil Company and the Idaho Gas & Oil Company?

A. There were some units belonging to them that were included on the policy.

Q. Were any Covey truck drivers discharged, if you know?

A. Well, they have no truck drivers.

Q. They have none? [860] A. No.

Q. Who drove those Covey trucks?

A. Lessee accounts, and employees—that was incidental to their work.

Q. Were any Idaho Gas & Oil Company truck-drivers discharged, if you know? A. No.

Q. Do you mean no, you don't know, or no, there were no discharges?

A. There were no discharges. I might add that they had no truckdrivers exclusively engaged in truck driving. [861]

Redirect Examination

Q. It is Covey Gas & Oil Company whose stock is owned—the Covey Gas & Oil Company of Idaho

(Testimony of Frank L. Copening.)

whose stock is owned exclusively by the Idaho Refining Company, I understand? [868]

A. Yes, sir.

Q. While the Idaho Gas & Oil Company is owned by independent stockholders?

A. Yes, sir.

Recross Examination

Q. (Mr. Penfield) You have testified regarding losses on equipment other than that used by the truck drivers driving from Pocatello? [869]

A. Yes, sir.

Q. Do you know who Fred Pierson is?

A. Yes, sir.

Q. Who is he?

A. He is a lessee account at Challis, Idaho.

Q. Do you recall an accident involving Fred Pierson? A. Yes, I do.

Q. When did that occur?

A. It was in the summer, sometime, possibly—

Q. Could it have been June 10, 1941?

A. Yes.

Q. That was a total loss, wasn't it?

A. I think that we finally settled on the basis of a total loss on that truck.

Q. Could it have been a loss of \$1250 claimed, less salvage of \$299? Isn't that correct?

A. As I recall, it was in the neighborhood of a thousand dollars on that loss. I don't recall whether that included the salvage or just the details of it.

(Testimony of Frank L. Copening.)

Q. Well, that loss was paid by the insurance company, was it not?

Mr. Moyle: May the record show that we gave to Mr. Penfield this morning, in addition to what his subpoena called for, the insurance we had pertaining to the Covey Gas & Oil Company and the Idaho Gas & Oil Company. I don't know whether he wants to [870] go through all that list with this witness, but there would be information in there that he could go through it later.

Mr. Penfield: I would like to have the record show that there have been losses on other vehicles than those directly used by the truckdrivers of the Idaho Gas & Oil Company, and that they were covered by the same policy and that they were paid.

Mr. Moyle: I am sure before our case is over, that it will all be brought out in detail.

Mr. Merrill: That Pierson loss was a 1941 tank truck of the Idaho Refining Company.

Trial Examiner Riemer: Proceed by question and answer.

Q. (Mr. Penfield, continuing) Do you know who George White is? A. George White?

Q. Yes.

A. I can't just recall right now—George White.

Q. Do you recall an accident involving a 1939 Chevrolet— a half-ton truck on October 24, 1941?

A. Could that have been at—

Q. Twin Falls. A. What kind of a truck?

Q. A 1939 Chevrolet—1½ ton gas truck.

(Testimony of Frank L. Copening.)

A. I don't recall that particular one.

Q. You have no knowledge as to whether or not there was any insurance claim paid? [871]

A. Not from the information you have given me, I don't no.

Q. Well, that is about all the information there is.

A. I don't recall that.

Q. Do you know Mervin Zollman?

A. I don't recall that name, no, sir.

Q. Do you recall an accident on October 4, 1941, involving a GMC truck of the Idaho Refining Company, an accident occurring there near Mountain Home, Idaho?

A. I recall a wreck that occurred near Mountain Home, yes. Does it mention anything about a horse being killed?

Q. I have no knowledge.

A. I recall a wreck near Mountain Home.

Q. That was in October, 1941, was it not?

A. It could have been. I don't know the exact date.

Q. You don't know who Zollman was?

A. I don't recall that name.

Q. He wasn't one of the drivers driving out of Pocatello?

A. I don't believe he was. I don't recall that.

Q. Could he have been in the employ of the Idaho Gas & Oil Company?

A. I can't place that name.

Q. I think it is Zollmers.

A. I don't recall that name.

(Testimony of Frank L. Copening.)

Q. You do recall something about an accident?

A. There was an accident near Mountain Home, yes, I remember [872] that.

Q. Do you know Charles Crawshaw?

A. I can't place that name.

Q. Do you recall an accident involving a Ford truck owned by the Idaho Refining Company which occurred at Pocatello on October 22, 1941?

A. Ford truck?

Mr. Moyle: Of course, I don't know why the record should be encumbered. I am advised that these are names of third party claimants. I don't know anything about them.

Mr. Penfield: That is not my information. My information is that they were drivers.

Trial Examiner Riemer: It is a legitimate subject of inquiry if Mr. Penfield wants to depend on this. If there is some insurance agent that is going to come in, that is up to him. Read the question.

(The last question was read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) Do you recall that? A. What was his name?

Q. Charles Crawshaw, indicated as the driver of the truck?

A. I am not saying that he wasn't an employee, but I doubt that he was a regular truckdriver. I don't recall the name.

Q. Do you know a driver by the name of Wayne Conrad? A. Yes. [873]

(Testimony of Frank L. Copening.)

Q. Do you recall an accident involving Mr. Conrad occurring August 31, involving a 1939 Chevrolet truck belonging to the Covey Gas & Oil Company?

A. Yes, I recall that.

Q. And he was one of the drivers—he was an employee of the Covey Gas & Oil Company—that is correct, is it not?

A. Yes, he was a lessee, I think, at the time.

Q. The loss was paid by the insurance company, was it not? If you recall?

A. As I recall that particular wreck, there was no loss paid to us. The other party received \$33.

[874]

AUGUST ROSQVIST

was thereupon called as a witness by and on behalf of the Board and, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Riemer: Will you please state your name?

The Witness: August Rosqvist.

Trial Examiner Riemer: And where do you live?

The Witness: 1246 North Grant, Pocatello, Idaho.

Q. (Mr. Penfield) What is your present position, Mr. Rosqvist?

(Testimony of August Rosqvist.)

A. Secretary of the Idaho State Federation of Labor and the Pocatello Central Labor Council.

Q. How long have you held those positions?

A. 13 and 16 years.

Q. 14 for which?

A. For the State Federation of Labor.

Q. And 16 for the Central Labor Council?

A. For the Pocatello Central Labor Council.

[883]

Q. Was the Idaho Refining Company ever placed on any of these lists? A. Yes, sir.

Q. On which one?

A. On the Pocatello Building Trades Council on May 24, 1939; on the Pocatello Central Labor Union, May 25, 1939; and the Idaho State Federation of Labor, September 20, 1939.

Q. Was that an unfair list, or a non-patronage list? A. Unfair list and non-patronage list.

Q. Do you know why the Idaho Refining Company was placed on [889] this list?

Mr. Moyle: That is objected to as not being within any issue of the case, and not within the offer.

Trial Examiner Riemer: The objection is overruled.

Mr. Penfield: You may answer the question, Mr. Rosqvist.

A. Because the company refused to employ union building trades craftsmen in their alterations or repair work.

Q. Were you ever approached by any officials

(Testimony of August Rosqvist.)

of the company in regard to the company's being placed on these lists? A. Yes, sir.

Q. At what time? A. In the fall of 1939.

Q. And who approached you?

A. Mr. Arch Webb and Mr. John Peterson.

Q. And where did you see them, or how did you see them?

A. Arrangements were made through a committee of the Building Trades Council to meet with them in my office in the Labor Temple.

Q. Who requested the meeting?

A. Mr. Webb of the Idaho Refining Company.

Q. Where did this meeting take place?

A. In my office in the Labor Temple.

Q. And who was present?

A. Mr. Webb and Mr. Peterson, representing the Company, and Mr. Brandt of the Teamsters and myself, and then another member of [890] the Building Trades Council. His name I cannot recall at the present time.

Q. And what occurred at this meeting?

A. Mr. Webb asked information as to how they could be removed from the Unfair List, in order to cooperate with the labor unions and secure the necessary building tradesmen to work.

Q. And what did you tell him?

A. That it would be necessary to sign an agreement to agree to hire only union building tradesmen and to employ union truckdrivers in the distribution of their products.

(Testimony of August Rosqvist.)

Q. Was anything said about your meeting with the employees?

A. At that time, Mr. Webb asked the question as to how his entire plant could be unionized, and we advised him that so far as we were concerned, we were not particularly interested in the whole plant, only the truck drivers and the building tradesmen. However, he desired to have that information and invited us to come out to a meeting at the plant, and explain how they could all be taken over into the A F of L organization

Q. Did you attend such a meeting?

A. Yes, sir.

Q. And when did it occur in relation to the meeting that you have described in your office?

A. Well, it was late in the fall of 1939. The exact date I can't remember, but it was after the firm had been placed on the unfair list by these other organizations.

Q. And where did this meeting take place?
[891]

A. In the office of the plant of the Idaho Refining Company.

Q. And who was present?

A. Mr. Brandt and myself were invited out there and were there at the meeting, and the company employees, truckdrivers and plant employees and officers of the company.

Q. What officers of the company?

A. Well, Mr. Webb was there, Mr. Peterson and Henry Henderson.

(Testimony of August Rosqvist.)

Q. Who is Henry Henderson?

A. I don't know if Henry Henderson was any official. He was, I believe, the head salesman of the product.

Q. How many persons were there?

A. Oh, about 30 or 35.

Q. And did you speak? A. Yes, sir.

Q. Were you introduced? A. Yes, sir.

Q. Who introduced you? A. Mr. Webb.

Q. After his introduction, did Mr. Webb stay in the meeting? A. Yes, sir.

Q. What did you say to the employees?

Trial Examiner Riemer: Will you read that last question and answer, Mr. Reporter?

(Whereupon the last question and answer hereinabove recorded were read aloud by the reporter.) [892]

A. I was asked to explain how they could form an organization in affiliation with us, and I explained the complete set-up, how they could be chartered, all plant employees, by an A F of L organization. The truckdrivers would have to join the truckdrivers organization, and the question was then asked by one of the officials if they could also join, to which I replied that one in an official capacity who had authority to hire or fire, could not join our organization, nor the office force.

Q. Did Mr. Brandt speak?

A. Briefly. He answered questions only.

Q. After you and Mr. Brandt had spoken, what happened?

(Testimony of August Rosqvist.)

A. We were asked to retire, and they would take a vote on whether they wanted to join us, or remain as an Association which they had.

Q. Did Mr. Webb remain? A. Yes, sir.

Trial Examiner Riemer: What was that answer, Mr. Reporter?

(Thereupon the last answer of the witness was read by the reporter as hereinabove recorded.)

Q. Did you retire? A. Yes, sir.

Q. Did Mr. Peterson stay there?

A. Yes, sir.

Q. Were both of them present during the time that you spoke? A. Yes, sir. [893]

Q. Is the Idaho Refining Company still on the non-patronage list? A. Yes, sir.

Q. In the fall of 1941, were you ever approached by any employees of the Idaho Refining Company?

A. Yes, sir.

Q. What employees?

A. Three truck drivers.

Q. Where did you meet them?

A. They called at my office.

Q. Do you recall who they were?

A. Mr. Campbell was one of the truck drivers. I don't recall the names of the other two.

Q. What did they want?

A. They asked for information as to how they could join the truck drivers union.

Q. What information did you give them?

(Testimony of August Rosqvist.)

A. I advised them that if they joined in a group, all of them, then I might be able to get a dispensation for them, to get them in for a half fee, into the truck drivers union.

Q. Did you give them any application cards?

A. Yes, sir.

Trial Examiner Riemer: Mr. Witness, whom did you give the application cards to?

The Witness: To these three truck drivers. [894]

Q. (Mr. Penfield, continuing): Did you have any later meetings?

A. A few days later I had a couple of meetings at my home.

Q. And who attended these meetings?

A. About 10 or 12 truckdrivers.

Q. Was there any persons other than truckdrivers there?

A. There was one machinist.

Q. Do you recall who that was?

A. Mr. Archibald.

Q. About what time was this first approach, and when did the subsequent meetings take place?

A. About the middle of September.

Q. Do you recall about when this meeting at your home at which Mr. Archibald was present took place?

A. About a week—about the third week in September, 1941.

Q. Did you explain what the initiation fee and the dues would be? A. Yes, sir.

Q. And what were those fees?

(Testimony of August Rosqvist.)

Mr. Moyle: These details, Mr. Examiner, we think are not material. The ultimate fact is the fact that they joined.

Mr. Penfield: If you want to stipulate that they all joined, it is all right with me.

Trial Examiner Riemer: What did you say, Mr. Penfield?

Mr. Penfield: I said, if they wanted to stipulate that they all joined the union, it is all right with me. [895]

Mr. Moyle: It doesn't call for any stipulation on our part. We know nothing about it. It was all done in our absence and without any knowledge on our part, or notice of any kind. They are all immaterial details. I don't care, in the final analysis how long we sit here.

Mr. Penfield: I am not going to go into much detail on these meetings, as a matter of fact.

Trial Examiner Riemer: The objection is overruled.

Mr. Penfield: What was the last question, Mr. Reporter?

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

Q. What were those fees?

A. \$15 to join the Machinists organization and a half fee to the Teamsters, or \$12.50 a member.

Q. Was anyone appointed to collect the dues, or the initiation fees? A. Yes, Mr. Archibald.

Q. Was that for the Machinists or the Teamsters, or both? A. Both.

(Testimony of August Rosqvist.)

Q. Was he given any application blanks?

A. Yes, sir.

Q. Following these first meetings, was any money ever paid you by the truck drivers?

A. Yes, sir.

Q. Was any money ever turned over to you by Mr. Archibald? [896]

A. Yes, sir.

Q. Did you keep a record of the amounts turned over to you?

A. Yes, I did.

Trial Examiner Riemer: I don't think that that is material. The record of the individual who paid in the amount.

Mr. Penfield: That is true.

Trial Examiner Riemer: Well, go ahead.

(Whereupon a document was marked by the reporter as Board's Exhibit No. 24 for identification.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit No. 24 for identification, Mr. Rosqvist, and ask you if you can tell me what that is?

A. That is a correct financial statement which I submitted to the Teamsters organization of money that I collected, and those who signed up to join that organization.

Q. Does that contain the names of the truck-drivers working with the organization?

A. Yes.

Q. Does it contain the amounts that they have paid?

A. The amounts which they paid to me, yes, sir.

(Testimony of August Rosqvist.)

Q. In this one column, you have, "Amount paid to Rosqvist"; what does that represent?

A. That was money which was paid to me by them, directly or indirectly.

Q. By "indirectly," do you mean through Mr. Archibald? [897]

A. Through Mr. Archibald, who paid a certain amount to my daughter in my absence.

Q. And what is the significance of the column "Amount paid to Brandt"?

A. The amount which was paid to him in my absence.

Q. Did Mr. Brandt have any part in the preparation of this sheet of paper?

A. No, sir, not outside of giving me the information of the amount he had collected at that time.

Q. He gave you the information which appears in this column (indicating)?

A. That is right.

Q. What did you do with this money that was paid to you?

A. Turned it over to the Teamsters organization, 440.

Q. Was this at a meeting?

A. Yes, sir.

Q. Do you recall approximately when this meeting was?

A. About October 27.

Q. I note after the names of the drivers that you have a number of marks in ink, did you make those marks?

A. Yes, sir.

Q. What is the meaning of this checkmark (indicating)?

A. Be present at the meeting.

(Testimony of August Rosqvist.)

Mr. Moyle: I couldn't hear the answer.

(Thereupon the last answer was read aloud by the reporter [898] as hereinabove recorded.)

Q. What is the meaning of the zero after the name of Wayne Douglas?

A. Absent, being out of town that evening.

Q. There is no mark after Chris Gregerson, do you know the significance of that?

A. Just omitted. He wasn't there.

Q. There is a line after the name Wayne Nord?

A. Wayne Nord had not paid any money to me, and therefore could not attend the meeting.

Q. There is no amount after the name "Carl E. Hill"? What is the meaning of that?

A. He made an application, but failed to make payment on the application up to that date.

Q. Do you know if he later made any payment?

A. I have no knowledge.

Q. There is no amount after Victor Ellingford. Do you know the reason for that?

A. The same reason, no money paid to me, and he probably later on paid it to Mr. Brandt. His name was listed. He had made application.

Q. Do you know that he had made application?

A. Yes, sir.

Q. There after the name H. H. Henricksen, there is listed an amount, a sum paid to Rosqvist, and following that, in paren- [899] thesis, the statement saying "no application". What is the meaning of that?

(Testimony of August Rosqvist.)

A. I didn't have the application in my possession. I was advised that the application was made directly to Mr. Archibald, and he was holding it in his possession until he could see,—

Mr. Moyle: We move to strike what advice he received.

Trial Examiner Riemer: Overruled.

Q. Had Mr. Henricksen paid you this sum?

A. \$6.25, yes, sir.

Q. For what purpose?

A. To apply on his initiation.

Mr. Penfield: I offer in evidence, Board's proposed exhibit No. 24.

Mr. Moyle: We object to it as incompetent, irrelevant and immaterial.

Mr. Penfield: I submit that it is a record made by their witness in his official capacity.

Mr. Moyle: It is a self-serving declaration.

Mr. Penfield: Of amounts paid to him for a specific purpose, which is in issue in this case.

Trial Examiner Riemer: Has the witness testified when that document was prepared, Mr. Penfield?

Mr. Penfield: I believe that he did.

Trial Examiner Riemer: I believe that he did, too. Didn't he say about October 27th? [900]

May I see Board's Exhibit No. 3, please, Mr. Penfield?

(Mr. Penfield hands paper to Trial Examiner Riemer.)

(Testimony of August Rosqvist.)

Trial Examiner Riemer: The objection is overruled. The exhibit may be admitted and marked as Board's Exhibit No. 24.

(Whereupon the document heretofore marked as Board's Exhibit 24 for identification, was received in evidence.)

BOARD'S EXHIBIT No. 24

October 27, 1941

OIL REFINERY EMPLOYEES

	Amount paid to Rosqvist.	Amount paid to Brandt
✓ John P. Evans.....	\$ 6.25	\$6.25
— Wayne Nord.....		6.25
✓ A. Stanley Merrill.....	6.25	
✓ R. E. Miller.....	6.25	6.25
✓ James Ayers.....	6.25	
O Wayne Douglas.....	6.25	6.25
✓ Carl E. Hill.....		
✓ Robert W. Patterson.....	6.25	6.25
✓ Howard L. Davis.....	6.25	6.25
✓ Guy Campbell.....	6.25	
✓ Leonard Fowler.....	6.25	
✓ John Ray.....	6.25	
✓ P. P. Stanger.....	6.25	6.25
✓ A. L. Heckert.....	6.25	6.25
✓ Boyd Cornia.....	12.50	
✓ Myron D. Whitesides.....	6.25	6.25
Chris R. Gregerson.....	6.25	6.25
✓ Victor Ellingford.....		
✓ S. R. Burkholder.....	6.25	6.25
✓ H. H. Hendricksen.....	6.25	(no application)
Totals.....	<u>\$106.25</u>	<u>\$56.25</u>
	122.50	
Less	108.00	
	<u>4.50</u>	
✓ Leland Stanford.....	6.25	

(Testimony of August Rosqvist.)

Q. (Mr. Penfield, continuing): Do you note the name Wayne Nord on Board's Exhibit 24?

A. Yes, sir.

Q. Was he an employee of the Idaho Refining Company? A. Yes, sir.

Q. Was he a truck driver?

A. I am not so positive about that. I understood that he was what they call a grease monkey, taking care of the oiling and greasing of trucks.

Q. Would he be eligible for admission to the Teamsters' organization?

A. Yes, I have his application. [901]

Cross Examination

By Mr. Moyle:

Q. Now, you knew at that time,—that when the company built [915] the asphalt unit out there on the respondent's property, that that was built with union labor, as a union job, did you not?

A. Our members weren't working for the company. They were working for a union contractor out of Los Angeles.

Q. And the job was done on a union closed shop basis? A. That is right.

Q. By union labor? A. Yes, sir.

Q. And during all of that time, the refinery continued on the unfair list that you have heretofore referred to? Is that correct? A. Yes, sir.

Q. This asphalt unit was built after the refinery had been placed on the unfair list, as you say?

A. Yes, sir. [916]

BOARD'S EXHIBIT No. 25

RECEIPTS

1. Leo Archibald	\$ 7.50
2. Boyd Cornia	12.50
3. Guy Cambell	6.25
4. Bob Peterson	6.25
5. John Ray	6.25
6. Joe Stanger	6.25
7. W. Miller	6.25
8. Myron D. Whatsides	6.25
9. Howard Davis	6.25
10. Sandy Merrill	6.25
11. Chris Gregerson	6.25
12. Pat Burkholder	6.25
13. Leonard Fowler	6.25

Total.....\$88.75

Bryant collected from

John P. Evans\$ 6.25

Wayne Nord 6.25

Mr. Moyle: At this time, Mr. Examiner, comes now the respondent, Idaho Refining Company, at the close of the Board's case, and after the Board has adduced its evidence in support of the consolidated complaint on file herein, and has rested, and moves that the said consolidated complaint be dismissed upon the grounds that the evidence adduced by the Board fails to sustain the charges contained in said consolidat- [925] ed complaint, or any of them, upon the grounds and for the reasons hereinafter specifically set forth, and that the proof ad-

duced by the Board fails to disclose a violation of the National Labor Relations Act by the respondent;

The respondent further and likewise moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 1 of the National Labor Relations Act, and such portions of the consolidated complaint as pertain thereto, that is to say, for the reason and upon the ground that the Board has failed to establish by its evidence an interference by respondent with the right of employees to join said union as they see fit;

And further and likewise moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 2 of the National Labor Relations Act and such portions of the consolidated complaint as pertain thereto, that is to say, the Board has failed to substantiate by its proof any domination or interference with the formation or organization of a labor union, or the giving to any labor union of financial support, in violation of this section of the Act;

And further moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 3 of [926] the National Labor Relations Act, and such portions of the consolidated complaint as pertain thereto, that is to say, that the Board has failed by its evidence to substantiate or prove any discrimination by respondent

in regard to hire or tenure of employment, or to offer any proof that respondent has encouraged or discouraged membership in any association or union in violation of said section, and the said subdivision 3 of Section 8 thereof;

And further moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 5 of the National Labor Relations Act, and such portions of the consolidated complaint as pertain thereto, that is to say, the Board has failed to establish by its evidence any refusal on the part of respondent to bargain collectively with representatives of the employees, in violation of said section.

Said motions are based upon the following grounds, and each of them, to-wit:

1. That the Board has failed by its evidence to substantiate or prove that the management of the Idaho Gas & Oil Company is or has been under the supervision, direction or control of the respondent, or that the respondent is or has been an employer of the employees of the Idaho Gas & Oil Company, either within the meaning of Section 2, sub-section 2 of the Act, or at all.

2. That the Board has failed by its evidence to substantiate [927] or prove the allegations of paragraph 5 of said consolidated complaint, or any of them.

3. That the Board has failed by its evidence to substantiate or prove that on any occasion before March, 1940 or thereafter, or at all, respondent has

interfered with, restrained or coerced its employees in the exercise of their rights to self organization or at all, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

4. That the Board has failed in its evidence to substantiate or prove that respondent, either before March 1940 or thereafter, has on any occasion or in any way interfered with the right of its employees to bargain collectively through representatives of their own choosing, or has in any way restrained or coerced them from so doing, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect, but on the contrary, the evidence adduced by the Board affirmatively shows that the employees have bargained collectively when and as they saw fit, without any interference from the company.

5. That the Board has failed by its evidence to substantiate or prove that respondent, either before March 1940 or thereafter at any time has attempted in any way to discourage the membership of its employees in Machinists Local 198, and that any [928] proof adduced by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent; that, on the contrary, the evidence adduced by the Board shows affirmatively that the one mechanic, Archibald, joined the Union without interference from the Company, and there is no evidence to show that he was in anywise

affected by anything that the Company did, as shown by the evidence, or at all.

6. That the Board has failed, by its evidence, to substantiate or prove, either before March, 1940, or thereafter at any time, that Respondent at any time has attempted to discourage the membership of its employees in Teamsters Local 440, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

7. That the Board has failed by its evidence to substantiate or prove that respondent either before March 1940 or thereafter at any time, has attempted in any way to discourage the membership of its employees in Teamsters Local 983, and that any proof adduced by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent.

8. That the Board has failed by its evidence to substantiate or prove that the respondent either before March, 1940 or thereafter, or at any time, has attempted in any way to discourage [929] the membership of its employees in any bona fide labor union, or organization, or any labor organization whatsoever, and any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

9. That the Board has failed in its evidence to substantiate or prove that the respondent, either before or after March, 1940, did anything in violation of the National Labor Relations Act to encourage membership of its employees in the Em-

ployees Association, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

10. That the Board has failed by its evidence to substantiate or prove that respondent, by or through Kermit Rice, inquired of an employee hired as a truckdriver whether he belonged to the Teamsters Union or any labor union, or that he informed prospective employees that the manager of the company was opposed to unions or the membership of employees of respondent in labor unions, in violation of the National Labor Relations Act, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

11. That the Board has failed by its evidence to substantiate or prove that the respondent, either through its general manager, Gilbert Moyle, or its secretary, Frank Copening, or [930] through anyone else, either in the months of August or September, 1941, or at any other time, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that respondent would not hire or retain in its employment truckdrivers who belonged to the Teamsters Union, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

12. That the Board has failed by its evidence to substantiate or prove that either in the month of October, 1941 or at any other time, said respondent

by or through Gilbert Moyle or anyone else, advised an employee of the respondent, either at Boise, Idaho or any other place, that if the truckdrivers employed by the respondent joined the Teamsters Union, the respondent would discharge all its truckdrivers, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

We call attention of the Examiner to the fact that the witness McBride who testified to such a statement, was not an employee of respondent at the time the alleged statement was made to him, but was told that Mr. Moyle was going to hire him in a few days, and Mr. Moyle did thereafter hire him.

13. That the Board has failed by its evidence to substantiate or prove that on November 13, 1941, or at any other time, [931] the respondent, by or through Kermit Rice, inquired of a truckdriver employed by the respondent whether he belonged to Teamsters' Local 440, and whether the other truckdrivers employed by the company belonged to said union, in violation of said Act, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

14. That the Board has failed by its evidence to substantiate or prove that the respondent, on or about September 16, 1941, or at any other time, by or through W. A. Sheppard or anyone else, attempted to induce an employee of the Idaho Gas & Oil Company to report to the respondent whether

truckdrivers employed by Idaho Gas & Oil Company at Boise were members of the Teamsters Union, or advised said employee that employees who joined or belonged to said union would be discharged, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

15. That the Board has failed by its evidence to substantiate or prove that since November 14, 1941, or at any other time, the respondent by or through Kermit Rice, C. E. Henninger, Gilbert Moyle, Frank Copening, or anyone else, has inquired of persons applying for employment as truckdrivers, or of employees hired as truckdrivers, whether they belonged or had belonged to the Teamsters Union, or any other outside labor union, or [932] advised them that the company was opposed to membership of employees in such unions or at all, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

16. That the Board has failed by its evidence to substantiate or prove that in November and December, 1941, or at any time, the respondent by or through Kermit Rice or C. E. Henninger, instructed truckdrivers of respondent to present any grievance they had directly to the management, and not through Teamsters Local 440 or any outside organization or representative, or indicated to said employees that the truckdrivers employed by the company prior to November 14 had been discharged

because they sought to be represented by Teamsters Local 440, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

17. That the Board has failed by its evidence to substantiate or prove that in January, 1942, when certain truck drivers were transferred from Baker, Oregon to Pocatello, Idaho, or at any other time, respondent instructed said employees that they should not engage in any union or concerted activities while employed at Pocatello, or discuss working conditions with other drivers employed by respondent, and that any proof adduced by the Board in connection therewith does not [933] substantiate, prove or constitute unfair labor practice by respondent.

18. That the Board has failed by its evidence to substantiate or prove that any of its employees mentioned in paragraph VI of said consolidated complaint were discharged on November 14, 1941 because of their membership in or activity on behalf of Teamsters Local 440, or for the purpose of discouraging membership in such Teamsters Local 440, or to avoid respondent's obligation to bargain with said Teamsters Local 440, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent; and in this respect, respondent calls the Examiner's attention to the fact that there is no competent evidence in this record showing in any way, shape or form, that

the respondent at any time had any notice or knowledge, or indication in any way, that the drivers who were discharged on November 14 1941, had joined Teamsters Local 440, or any other union, at the time of their discharge; and knew nothing thereof until after their discharge, and at the meeting of November 14, which was held after their discharge, and at which Mr. Brandt and Mr. Thompson attended.

19. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph VI of said consolidated complaint, or any of them.

[934]

20. That the Board has failed by its evidence to substantiate or prove a refusal of the respondent to reinstate employees discharged on November 14th, 1941, mentioned in paragraph VI of said complaint, the evidence in this respect affirmatively showing that several of said truckdrivers have been offered re-employment, and some have accepted the same, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent; and I might add to my 19th reason, the statement that the evidence adduced in connection—by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent.

21. That the Board has failed by its evidence to substantiate or prove the allegations of Paragraph VII of said consolidated complaint, and that any proof adduced by the Board in connection there-

with does not substantiate, prove or constitute an unfair labor practice by respondent.

22. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph VIII of said consolidated complaint, or any part thereof, and that the proof adduced by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent.

23. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph IX of said consolidated complaint or any part thereof. That the evidence of the [935] Board in this respect affirmatively shows that so far as respondent is concerned, Teamsters Local 440 or Teamsters Local 983 have wholly failed to furnish respondent during any of the times mentioned in said consolidated complaint, any evidence of its right to exclusive representation of the employees of the respondent referred to in paragraph 9 of said consolidated complaint, and that said testimony further affirmatively shows that respondent affirmatively offered to bargain with said Local 440 upon the furnishing of such proof, and that said Local 440 has never at any of the times mentioned in said consolidated complaint tendered any proof or further requested any bargaining, and that the proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

24. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph

X, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

25. That the Board has failed by its evidence to substantiate or prove that either on November 14, 1941 or at any time has respondent refused to bargain collectively with Teamsters Local 440, or Teamsters Local 983, or any other union, with respect to rates of pay or wages or hours of employment or other conditions of employment, or at all, for the unit described in paragraph [936] IX of said complaint, or any other unit, or at all, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

26. That the Board has failed in its evidence to substantiate or prove the allegations contained in sub-division 2 of paragraph X, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by the respondent.

27. That the Board has failed in its evidence to substantiate or prove the allegations contained in subdivision 3 of paragraph X, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

28. That the Board has failed in its evidence to substantiate or prove the allegations contained in subdivision 4 of said paragraph X, and that any proof adduced by the Board in connection therewith

does not substantiate, prove or constitute an unfair labor practice by respondent.

29. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph XI of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

[937]

30. That the Board has failed by its evidence to substantiate or prove the allegation of subdivision 1 of paragraph XI of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

31. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 2 of paragraph XI of said consolidated complaint or any of them and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

32. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 3 of paragraph XI of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

33. That the Board has failed by its evidence to substantiate or prove the allegations of para-

graph XII of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

34. That the Board has failed by its evidence to substantiate [938] or prove the allegations of sub-division 1 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

Trial Examiner Riemer: In connection with No. 32, do you seriously question that this meeting of the Association was held on company property?

Mr. Moyle: We claim that does not constitute an unfair labor practice under the circumstances.

(Continuing with motion.)

No. 35. That the Board has failed by its evidence to substantiate or prove the allegations of sub-division 2 of Paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

No. 36. That the Board has failed by its evidence to substantiate or prove the allegations of sub-division 3 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

No. 37. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 4 of [939] paragraph 12 of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

38. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 5 of paragraph 12 of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

39. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 6 of paragraph XII, of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

That it affirmatively appears from the evidence of the Board that the discount on gasoline and other products purchased from the Covey Gas & Oil Company of Idaho was given to all employees of respondent, regardless of their membership in the said Employees' Association.

40. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 7 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does

not substantiate, prove or constitute an unfair labor practice by [940] respondent.

41. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 8 of paragraph XII of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

42. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 9 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

43. That the Board has failed by its evidence to substantiate the allegations of paragraph 13 of the consolidated complaint herein, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

44. That the Board has failed by its evidence to substantiate or prove that by any act or acts of the respondent it has interfered with, restrained or coerced, or is now interfering with, restraining or coercing any of its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, or that respondent has engaged in any unfair labor practice or practices, or is now engaging in any [941] unfair labor prac-

tices within the meaning of Section 8, subdivision (1) of the Act, or at all.

45. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph 14 of the consolidated complaint herein, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

46. That the Board has failed by its evidence to substantiate or prove that respondent, by the discharge of employees, and particularly those named in paragraphs 6 and 7 of the Consolidated Complaint herein, or by its refusal to reinstate discharged employees, particularly those named in paragraphs VI and VII of the consolidated complaint, or any of them, has discouraged, or is now discouraging membership of its employees or any of them in Teamsters Local 440 or Teamsters Local 983, or Machinists Local 198, or, in fact, any other labor organization or any self organization or other organization permitted by Section 7 of said Act, or that respondent has engaged, or is now engaging in any unfair labor practice within the meaning of Section 8, subdivision 3 of the Act, or at all; that on the contrary, the evidence of the Board affirmatively shows that respondent endeavored to re-hire several of its said discharged employees and particularly those named in paragraph VI and VII of said consolidated complaint, and did re-hire some of said discharged employees,

[942] while others of said employees refused said employment.

47. That the Board has failed by its evidence to substantiate or prove any unfair labor practice engaged in by respondent.

48. That the Board has failed *to* its evidence to substantiate or prove the allegations of paragraph XV of the consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

49. That the Board has failed by its evidence to substantiate or prove that the respondent on any occasion or at any time, refused to bargain collectively with Teamsters' Local 440 or 983, as alleged in paragraphs VII, IX, and X of said consolidated complaint or otherwise, or at all, but on the contrary, the evidence of the Board affirmatively shows that respondent was willing to bargaining collectively with Teamsters Local 440 and offered so to do upon appropriate proof of its right of representation of respondent's employees or any part thereof.

50. That the Board has failed by its evidence to prove the allegations of paragraph XVII, or any of them, and that any proof adduced by the Board in connection theerwith, does not substantiate, prove or constitute an unfair labor practice by respondent.

51. That the Board has failed by its evidence to substantiate or prove any activity of the re-

spondent, either as [943] alleged in paragraphs V to XVI, inclusive, of said consolidated complaint, or at all, occurring in connection with the operations of the respondent as described in paragraphs I, II and III of said consolidated complaint, or in connection with anything else, that have led or have tended in any way to lead to labor disputes, burdening or obstructing interstate commerce or the free flow thereof or at all contrary to the National Labor Relations Act, or at all.

52. That the Board has failed by its evidence to substantiate or prove allegations contained in paragraph XVIII of said complaint, or at all.

53. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor practice affecting commerce within the meaning of Section 8, subdivision 1 of the Act.

54. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor practice affecting commerce within the meaning of subdivision 2, Section 8 of the Act.

55. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor practice affecting commerce within the meaning of subdivision 3, Section 8 of the Act.

56. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor [944] practice affecting commerce within the meaning of subdivision 5, Section 8 of the Act.

The respondent further moves to strike all of the testimony of Archibald and all the testimony pertaining to Archibald's union activities, upon the ground that there is no evidence, direct or inferential, that knowledge of his activity was ever acquired by the company, and that there is no evidence in the record from which knowledge on the part of the company could be inferred.

And the respondent moves at this time to dismiss the complaint filed herein so far as Bowman, Brower, and Henricksen are concerned, and requests that the motion be considered for each of these three as tho separately made, the evidence affirmatively showing that they never joined Local 440 and were not members of 440 at the time of their discharge.

Trial Examiner Riemer: What were those names,—Bowman, Brower and Henricksen?

Mr. Moyle: Yes, Bowman, Brower and Henricksen.

Trial Examiner Riemer: Bowman is not named in the complaint.

Mr. Moyle: Wait a minute. I may have the wrong name there. It seems to me that there were three of them. That should be Douglas instead of Bowman.

Trial Examiner Riemer: Brower, Henricksen and Douglas.

Mr. Moyle: That is right. [945]

Trial Examiner Riemer: Does that complete your motion?

Mr. Moyle: Yes, Mr. Examiner.

Trial Examiner Riemer: The hearing will recess for five minutes. I will rule on your motion when we reconvene.

(Whereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Riemer: The hearing will be in order.

Mr. Moyle: Could we have the motion show the name of Ellingford, added to the last motion that I made? That is four instead of three.

Trial Examiner Riemer: Will you do that, Mr. Reporter, please?

Before I rule on your motion, Mr. Moyle, there is one or two questions that I want to ask.

Is the Association represented this morning? Is the Association present or represented in this court room this morning? Does it have any motion to make? [946]

Trial Examiner Riemer: The respondent's motion to dismiss the complaint and its subdivisions is denied without prejudice to a renewal of the motion at the conclusion of its case. [949]

Trial Examiner Riemer: The motion to strike Archibald's testimony is denied.

Mr. Moyle: And a motion to dismiss the complaint as to Douglas, Brower, Henricksen and Ellingford?

Trial Examiner Riemer: The motion is denied.

DECKER LITTLE,

was thereupon called as a witness by and on behalf of the Respondent, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: Decker Little.

Trial Examiner Riemer: And where do you live, sir?

The Witness: Salt Lake City.

Trial Examiner Riemer: Thank you.

Direct Examination

Q. (Mr. Merrill) What is your occupation?

A. I am branch manager of the Firemen's Insurance Company of [950] Newark, New Jersey, and of the Metropolitan Casualty Company of New York.

Q. With your office at what point?

A. Salt Lake City, 917 Continental National Bank Building.

Q. What is the extent of the branch of which you are manager? A. How do you mean?

Q. The territory.

A. Utah and Southern Idaho and Eastern Nevada.

Q. How long have you been engaged in that business? A. 15 years.

Q. As such manager, do you know of any policy that had heretofore been issued to the Idaho Refining Company with coverage on fleet equipment?

A. Other than ours?

(Testimony of Decker Little.)

Q. No, of your company. A. No.

Q. Do you know of policies having been issued by the companies you represent?

A. Yes, sir.

Q. Will you state those policies?

A. Well, we had one policy, which is fleet coverage, on all the automotive equipment of the Idaho Refining Company.

Trial Examiner Riemer: Mr. Witness, you will have to define "we".

A. "We", well, the Firemen's Insurance Company of Newark, New [951] Jersey and the Metropolitan Casualty Company of New York.

Trial Examiner Riemer: Go ahead. Will you read the last answer, Mr. Reporter?

(Answer read aloud by the reporter as hereinabove recorded.)

A. (Continuing) Issued under combination policy and known as policy FM-227.

Q. When was policy FM-227 issued?

A. I think August 22, 1941.

Q. How long did it remain in effect?

A. It remained in effect until November 17th, 1941.

Q. What became of it then?

A. It was cancelled by registered notice at the company's election.

Q. By whom was it cancelled? A. By me.

Q. Was there a telegram which preceded it?

A. Yes, sir.

(Testimony of Decker Little.)

Q. I hand you what has been produced in evidence as Board's Exhibit 22 and ask you if you have ever seen this telegram before?

A. Yes, sir; I dictated that telegram and sent it from Salt Lake City.

Q. To whom did you send it?

A. I sent it to the Idaho Refining Company.

Q. What was the purpose of that telegram?

[952]

A. To gave them notice that we were cancelling their policy due to the excessive loss ratio.

Q. You said that you were cancelling it at the company's election? A. Yes, sir.

Q. What company do you mean?

A. The Metropolitan Casualty Insurance Company of New York and the Firemen's Insurance Company of Newark, New Jersey.

Q. Do I understand that you meant that it was being cancelled by reason of the decision of the company to cancel it?

A. I act for the company in Salt Lake City and this territory. My decision is the company's decision.

Q. Was that decision then made prior to the time that you sent the telegram?

A. It was made the day before I was in Pocatello and notified the company that I was cancelling the policy off.

Q. Now, why was there a limitation as to the time of cancellation?

A. We wanted to give the Idaho Refining Com-

(Testimony of Decker Little.)

pany as much time as possible to replace its policy, as it is difficult after a company gets off a risk, to replace it without a thorough investigation.

Q. Now, what was done with the policy after its cancellation?

A. My recollection is that it was returned to our Salt Lake office. [953]

Trial Examiner Riemer: I am sorry, but I didn't hear the answer.

A. My recollection is that it was returned to our Salt Lake City office, and later sent to San Francisco, and I understand they destroy them there, so there is no chance of the policy being in force again.

Q. (Mr. Merrill, continuing): Then I understand the original policy FM-227 has been destroyed by the San Francisco office?

A. That is to the best of my knowledge.

Q. Any other policies, if any, outstanding, would be mere copies of the original?

A. That is right.

Q. Now, who was the agent of the companies you represent who issued the policy?

A. The Turner Insurance Agency, Pocatello, Idaho.

Q. And what representative of the Turner Insurance Agency handled that business, if you know?

A. Rube F. Turner.

Q. And where does he live?

A. Pocatello, Idaho.

(Testimony of Decker Little.)

Q. Is the Turner Insurance Agency an Idaho Company?

A. I understand it is a corporation of the State of Idaho.

Q. Having its office at what point?

A. In the Bannock Hotel Building, Pocatello, Idaho.

Q. Now, why was policy FM-227 cancelled?
[954]

A. The reason that it was cancelled was because of the frequency of collision claims and property damage claims, and I had been instructed to watch very closely, because we were afraid of a very serious personal injury case.

Q. What losses had occurred under the policy?

A. That I can't give you because I haven't the information here, but there was a frequency, just happening too often—that is all.

Q. Will you explain a little more fully what you mean by frequency and happening too often?

A. We issue our policies for a premium, and that premium charge is based on a 50 per cent. loss ratio, and 50 per cent. for operations. This had developed practically 50 per cent. of the 100 per cent. put away with which to pay the losses. If we operated on that policy any further, we would lose money over and above the amount, so it was embarrassing for me to continue on that policy.

Q. To what were the losses due?

A. That I can't say. The Idaho Refining Company owned the trucks and employed the drivers.

(Testimony of Decker Little.)

No doubt the drivers were licensed in the state of Idaho, but they controlled the trucks, and the trucks were very good trucks, and in good shape.

Q. You understood the trucks have been in good shape and in good condition?

A. Practically new cars. [955]

Q. Leading one to the conclusion that it was the drivers' fault?

A. That is all that I can figure, because the Idaho Refining Company did not control their own trucks—the drivers did.

Q. Now, what were the fundamentals of the policy, what deductibles, what coverage, what type of equipment and so forth, was covered?

A. Well, I can't be positive. There were passenger cars covered for fire, theft, actual value, comprehensive, \$50 deductible, and \$100,000 property damage, and \$100,000 public liability for one person or more than one person in any one accident. That applied to all trucks and trailers, and the collision deductible was either \$100 or \$150.

Q. For each truck? A. For each truck.

Q. Did that apply likewise to the other automobiles?

A. Every automobile owned by the Idaho Refining Company, the Idaho Gas & Oil Company, and the Covey Gas & Oil Company.

Q. You mean, if there was a truck and trailer, they would both be covered?

A. Yes, they would both be covered for actual value, for fire, theft, with collision deductible, and

(Testimony of Decker Little.)

personal injury \$100,000 and property damage \$100,000.

Q. What do you mean by "deductible"?

A. That would be collision. That is, the Idaho Refining [956] Company was to pay the first \$100 or \$150 of any loss, and the insurance company paid everything over and above that amount.

Q. Assuming there was a truck and trailer going along the highway, covered by this policy, and an accident occurred in which both the truck and trailer were damaged, would the deductible be \$100 or \$200?

A. It would apply to each unit, that would be true—we call them tractors and trailers,—it would apply to each unit. That would be \$200 deductible, \$100 each.

Q. Now, then, if the loss to the truck or damage to the car was under \$100, then there would be no payment made by the company? A. No, sir.

Q. I mean by the insurance company?

A. No payment made.

Q. And then that would apply likewise to the trailer?

A. Yes, that would apply to the trailer.

Q. In all instances then where the loss or the damage to the covered property was under \$100 on each item, that loss would be absorbed by the Refining Company? A. That is right. [957]

Q. What information had you received touching the losses, or the driving of the covered equipment, Mr. Little?

(Testimony of Decker Little.)

A. Well, now, we don't participate—what I mean by that, we don't have the loss records right in our office. We have independent adjusters, the Fire Insurance Companies Adjustment Bureau in Pocatello, Twin Falls, and Boise. They have been adjusting the losses. Some losses have been adjusted by the Nichols Adjustment Bureau. We receive information pertaining to those losses in most cases. When the report is sent to the Company, we receive a copy, and at the conclusion it says, "Driver's fault," or some statement to that effect, and in most cases there was included "Driver was at fault" in every one of the accidents where collision and property damage loss was paid. [958]

Q. Have you ever observed the driving of any Idaho Refining Company trucks covered by this policy, on the highway?

A. Yes, two occasions. I was up here in November,——

Q. What year? A. 1941.

Q. What part of November?

A. I would say that it was the first part. It was before,—it was either the 5th or 6th, and I was making a little investigation because I had been put on notice there was another big loss reported on November 24—October 24, 1941, by the vice-president of our company, and on that notice, I came up here to investigate the condition. I left Pocatello for Idaho Falls and at Tyhee, just north of Pocatello——

Q. On the highway?

(Testimony of Decker Little.)

A. On the highway—I passed by a gasoline truck, and that truck passed me at I would say, 60 or 65 miles an hour, and when I got to Blackfoot it was dumping gasoline in an Idaho Gas & Oil station. It seems to me that station is just north of Blackfoot.

Q. How fast were you driving at the time that truck passed you?

A. I never go over 55 miles an hour.

Q. And that truck passed you on the highway?

A. Passed me before we got to Fort Hall.

Q. With an Idaho Refining Company driver?

A. I don't know as to that. [959] The Idaho Gas & Oil station was being fueled with that truck.

Q. You mean that you don't know the driver?

A. I did not know the driver. The only thing, I assumed that truck was an Idaho Gas & Oil truck,—or an Idaho Refining truck, because certainly they wouldn't be dumping gas at an Idaho Gas & Oil station if they were not.

Q. Was it a transport truck?

A. It was a big tractor and trailer.

Q. What was the other incident which you mentioned?

A. Before the end of the week, I was also going to American Falls, and one of the trucks that came out of the Idaho Refining Company there at the railway tracks, stopped at the railway tracks, I could see it there, and it passed me before I got to the bridge, before we arrived at American Falls.

Q. And how fast were you traveling?

(Testimony of Decker Little.)

A. About 55,—between 50 and 55 miles an hour.

Q. How fast would that truck be traveling?

A. I would say close to 60 or 65 miles an hour.

Q. And what type of truck was it?

A. A tractor and trailer.

Q. Drawing a cargo?

A. I judge it was drawing a cargo, because it came out of the refinery, and it certainly wouldn't go in there to unload—it would go in there to load up. [960]

Q. Now, Mr. Little, you say the policy FM-227 was issued in August, 1941? A. Yes, sir.

Q. Was there a policy in your company upon this equipment prior to that date?

A. Yes, that was renewing another policy that was dated the same date in 1940, for one year.

Q. And what was that policy number?

A. That was FM-199.

Q. Policy FM-199 remained in effect from August, 1940 to August, 1941?

A. That is right.

Q. And then August, 1941—in August, 1941, there was a renewal of the policy, and that was the one that was cancelled? A. Yes, sir.

Q. Had you experienced any losses under FM-199? A. Very disastrous losses.

Q. Relate a little more in detail those losses?

A. I haven't the records, but I know that we paid 'way over 100 per cent. loss ratio on that policy during the year 1940, August, 1940 to August, 1941.

(Testimony of Decker Little.)

Trial Examiner Riemer: That was on Policy FM-199?

The Witness: Yes, sir.

Q. (Mr. Merrill, continuing): Had you had your technicians examine the equipment? [961]

A. No, we don't maintain a field service; we just go on the year that the truck was made.

Q. You had examined, however, the truck, the make of truck, the character of truck?

A. That information is given to us by the Idaho Refining Company, and that naturally has to be checked over the state for license numbers.

Q. That is always done?

A. That is always done.

Q. Now, if the loss ratio on your policy FM-199 was excessive, why was the policy renewed or re-written as FM-227?

A. That policy was renewed because we felt that the line would not continue to show a loss ratio. We have this condition happen, that one year we will have a bad loss ratio on a line; it doesn't take much of a loss or many losses to make 100 per cent. loss ratio; and then the next year it will not show up the same way, but on this, we were in on the Idaho Refining Company when they first started, and our loss ratio has been going on until we cancelled off, so we felt that the loss ratio was getting no better, and no chance of getting any better, so the only thing that I could do was to cancel off to save myself embarrassment with the company.

(Testimony of Decker Little.)

Q. Was there any dissatisfaction expressed to you by the company itself?

A. Yes, Mr. Frank E. Chadwick, vice-president at San Francisco [962] visited me here in June or July and instructed me not to renew this policy, that is, FM-199.

Q. July of what year? A. July of 1941.

Q. Yes. A. I called in Gilbert Sheets,—

Q. Who is he?

A. He is, I understand, president of the Idaho Refining Company,—or was at that time.

Q. Living where? A. At Salt Lake City.

Q. Continue.

A. And through our persuasions to Mr. Chadwick, we secured permission upon his taking the matter up with his superior, which is Fred E. Sullivan, their superintendent of the automobile department George W. Donlan, to consider the re-issue of that policy, under the circumstances that we mentioned to him, which was that we ought to show a profit on that line. We received the information granting us permission to issue this policy immediately upon his return to San Francisco. That policy was re-issued under Policy FM-227 in August.

Q. Were your expectations realized, or otherwise?

A. No. The few days that we had the policy in effect, we had experienced about four thousand dollars loss out of an \$8500 premium, and with a loss ratio like that within 2-1/2 [963] months, all

(Testimony of Decker Little.)

we could expect was maybe a 500 or 600 per cent. loss ratio, and maybe a tremendous personal injury, as we have high limits.

Q. Now, what if anything had you—strike that.

Had you ever expressed any protest or admonition touching the driving of these trucks?

A. Every time we had a loss—there was such a frequency of these losses, as I mentioned before,—it was taken up with R. F. Turner of the Turner Insurance Agency.

Q. At Pocatello?

A. At Pocatello, and also I would let Mr. Sheets know about it, because he was president of the company. It was done more as information to the company.

Q. Did you ever make any expression of what would happen if correction was not made?

A. No, we never have. Our attitude is this: the company knows their loss ratio. They receive the checks. Now, if they can't take care of that condition, remedy it in some way, we have no way of doing it, and we do not maintain a field force for that purpose.

Q. Of course, you knew that the policy would have to be cancelled if the loss ratio became worse, or even maintained itself under Policy FM-199?

A. I just couldn't continue on the risk under the conditions, because we had made arrangements with Mr. Chadwick—we felt [964] the policy was going to develop a further loss, and I just couldn't

(Testimony of Decker Little.)

continue on that risk under the existing conditions, and that is all.

Q. Did you pass that information on to Mr. Sheets and Mr. Turner?

A. I passed it on to Mr. Turner every time I saw him, and I am pretty positive that I mentioned it to Mr. Sheets,—I see Mr. Sheets practically every day in Salt Lake City, and no doubt took it up with him many times.

Mr. Merrill: You may cross examine,—just a moment, please. Just another question or two.

Q. (Mr. Merrill, continuing): Mr. Little, is there any difference in the computation on premiums on long and short hauls?

A. Yes, there is.

Q. Explain it, please.

A. Well, on all trucks that operate within a radius of 50 miles, they are given a local haul rate. The next rate is 50 miles to 150 miles, which is given an intermediate rate; anything over 300 miles is given classification of long haul. Those rates are sometimes as high as 8 or 9 times the local haul rate. It is graded according to territory.

Q. Well, did the long and short haul experience have anything to do with the cancellation of this policy?

A. Not a bit. We were experiencing losses all over the state. [965] We had one loss—may I mention this?

Q. Yes.

A. We had one loss where a man started out

(Testimony of Decker Little.)

from Twin Falls for Pocatello and ended up in Wells, Nevada, and had an accident there.

Q. Sort of a wrong-way Corrigan?

A. Yes, we paid a total loss on that cargo.

Q. Have you any idea why he ended up in Wells, Nevada?

A. We have no idea, except he might have been a little drunk, we don't know.

Trial Examiner Riemer: You are assuming that?

The Witness: We assumed that. We don't know.

Mr. Penfield: We move that that answer be stricken if he doesn't know.

Trial Examiner Riemer: No, let it stay in.

Mr. Merrill: You may cross examine.

Cross Examination

Q. (Mr. Penfield): Mr. Little, did these policies that you referred to cover equipment of the Idaho Gas & Oil Company and the Covey Gas & Oil Company as well as of the Idaho Refining Company?

A. Yes, we included all three of the companies together, because they were so closely interwoven.

Q. It covered all of the equipment of those three organizations?

A. Yes, of those three organizations. [966]

Q. Mr. Little, you have testified in connection with your decision to cancel this insurance policy that you concluded that the drivers were at fault?

A. Well, how could you come to anything else?

(Testimony of Decker Little.)

We were responsible in no way whatsoever for their discharge or their reorganization or anything. The thing is that the Idaho Refining Company are not driving the cars, they own them, but the individuals were driving the cars. Now, it could be nearsightedness, farsightedness, lack of rest,—something was wrong. That is our attitude. We cancelled the policy off. We can cancel at any time. We do that when the policy becomes unprofitable. We are handling everybody's money. We can't lose money on our policies; we have got to be in a profitable business, and when we continually lose money on one line, we have to get off of it.

Q. As a matter of fact, you didn't know whether the drivers [969] were careful or just had accidents?

A. I don't know anything about them. I have no way of contacting the men driving the trucks; you have one bunch today, and somebody else tomorrow.

Q. You didn't know whether or not a majority of them had or had not had an accident?

A. I don't know, except the ones whose names were listed. The only ones we knew were the ones where they had claims. [970]

Q. Well, you stated that you had been considering for some time the loss ratio of the Idaho Refining Company, and did you make any suggestion to them in regard to it? [972]

A. No, I didn't. I feel that isn't our job. We insure a policy, and we insure a company; we

(Testimony of Decker Little.)

guarantee to pay certain losses that happen. Now, it is up to them to keep the equipment in good shape and keep good drivers, and keep everything in orderly condition. That is not our job. The only thing was that on the 27th of October, I insisted that they do something; then another loss came along, and I cancelled off.

Q. You say on October 27th you insisted that they do something? A. Yes, sir.

Q. How did you communicate this?

A. By letter.

Q. And what did you tell them?

A. Well, to the best of my recollection—I haven't the letter here—was the fact that something would have to be done about the loss ratio, or some sort of a safety campaign or something had to be done, because we couldn't continue on under that condition. Now, I don't know what I wrote—I haven't it here.

Q. Did you ever receive a reply from the company?

A. Now, I didn't personally. We had at that time five young ladies in the office, and a special agent, and the special agent didn't. We have only two of the young ladies in the office now who were with us at that time, and neither one of those did. Now, whether one of the other young ladies received any reply, I don't know personally. I didn't receive a reply to that letter, as I am out of the office about 80 per cent. of [973] the time, so when I say that I didn't receive it, I mean

(Testimony of Decker Little.)

that I didn't receive it, but it could have been received in the office.

Q. It never came to your attention?

A. No, it never came to my attention. The young lady in the automobile department is now out of the office.

Q. Wouldn't it be called to your attention if it had been received? A. Not particularly.

Q. In any event, that had no bearing whatever upon your decision to cancel?

A. My decision to cancel this policy was when I was up in November, and there had been a report that looked like another big loss on November 4th, and I just felt that I was sick and tired of trying to continue this line in force, so I cancelled off, and I gave them every consideration possible to get a new policy. We usually give five days, and we gave them approximately ten days.

Q. Did you ever suggest to the company that they discharge the drivers, or get a new crew of drivers?

A. We wouldn't dare do that, to be frank with you. We don't feel that we have that authority. We feel that if the company can't take care of that matter itself, then the only thing for us to do is to get off the risk.

Q. Is your answer that you did not?

A. It certainly is. [974]

Trial Examiner Riemer: Mr. Merrill, and Mr. Moyle, have you had time to examine Board's proposed exhibit No. 26 for identification?

(Testimony of Decker Little.)

Mr. Moyle: Yes, Mr. Examiner; we have no objection to it except that it is immaterial.

Trial Examiner Riemer: May I see it, please?

(Mr. Moyle hands exhibit to Trial Examiner.)

Trial Examiner Riemer: The proposed exhibit may be admitted and marked in evidence as Board's Exhibit No. 26.

Will you supply a copy?

Mr. Penfield: Yes, I will.

(Whereupon the document heretofore marked as Board's Exhibit No. 26 for identification was received in evidence.)

(Testimony of Decker Little.)

BOARD'S EXHIBIT NO. 26

Loyalty Group

Letterhead of

FIREMEN'S

Insurance Company

of NEWARK,

New Jersey

Organized 1855

SALT LAKE CITY BRANCH OFFICE

917 Continental Bank Building

Telephone 4-6417

Salt Lake City, Utah

December 18, 1941

Mr. John P. Evans

P. O. Box 910

Pocatello, Idaho

Dear Mr. Evans:

I wish to acknowledge your letter of December 18th with reference to the cancellation of the Firemen's Insurance Company and the Commercial Casualty Insurance Company policy with the Idaho Refining Company.

To start with, this class of business is looked on by insurance companies as the most hazardous type existing, and we only take these lines where the agency involved warrants it and in this case, we accepted this business for our agent because his agency warranted this concession.

We have carried the Idaho Refining Company

(Testimony of Decker Little.)

ever since they started to do business, and every year we have had a very serious loss ratio. The last policy was issued in August and the frequency of claims alarmed our San Francisco Department and I was instructed not to renew the policy when it expired. However, I notified the Idaho Refining Company that they must do something to reduce these claims such as safety campaigns, determining whether or not the drivers were in physical condition to drive trucks, whether careful check was made on long distance driving and whether trucks were kept in first class condition. We do know that these trucks were practically all new ~~new~~, and were the finest that could be obtained.

While in Pocatello and Boise during the month of November, I investigated the conditions existing and due to the claims piling up, I telegraphed the Idaho Refining Company advising them that we were cancelling their policy and that cancellation was to take effect as of November 17th. This gave them approximately ten days in which to replace the policy. Our notice of cancellation was November 12th, and the first advice of our intention to cancel was November 8th. I want to clearly bring this out to you that we have never during the operation of the above mentioned company tried to dictate to our assured whom they should employ, whom they should discharge or in any way interfere with the operation of their organization. We have made recommendations to safeguard and benefit not only the assured but our-

(Testimony of Decker Little.)

selves such as safety campaigns to be operated directly by the assured and periodical examination of their drivers.

In cancelling the Idaho Refining Company's policy, we never requested the discharge of any drivers. Cancellation was purely due to the loss ratio and the possibility of the losses continuing.

I trust this letter clears up any misunderstanding that you might have to the effect that our companies were responsible in any way for your dismissal from the Idaho Refining Company.

Yours very truly,

DECKER LITTLE

Decker Little

District Manager

DL:MR:F-Com

(Board's Exhibit 27 for identification marked by reporter.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit No. 27 and ask you if this is a letter written to the other truckdriver who visited you?

A. Well, I don't know the fellows. That is my signature there, and it is an identical copy of the other letter, or should be, at least.

Mr. Penfield: I offer it in evidence as Board's Exhibit No. [979] 27.

A. It is an identical letter.

(Testimony of Decker Little.)

Mr. Moyle: What is the purpose of having two identical letters?

Mr. Penfield: It appears to be the same letter. I wanted to establish that two drivers came.

Trial Examiner Riemer: Who is that addressed to?

Mr. Penfield: That is addressed to Mr. P. P. Stanger.

Trial Examiner Riemer: Mr. Moyle, without waiving any objection on the ground of its relevancy, would you stipulate that is a copy of Board's Exhibit No. 26?

A. It is not a copy; it is an individual letter.

Mr. Moyle: It is an exact copy of Board's Exhibit No. 26?

The Witness: That is right.

Trial Examiner Riemer: A copy of Board's Exhibit 26?

Mr. Moyle: Yes, but addressed to P. P. Stanger.

Trial Examiner Riemer: Yes.

Mr. Moyle: Who was Exhibit No. 26 addressed to?

Trial Examiner Riemer: John Evans, and this letter is addressed to whom?

Mr. Penfield: To Mr. P. P. Stanger. Well, with that understanding, I will not offer it.

(Whereupon a document was marked as Board's Exhibit No. 28 for identification.)

Q. I show you Board's Exhibit No. 28 for identification and ask [980] you if you can tell us what this is?

(Testimony of Decker Little.)

A. It is an answer to Mr. Babcock's letter.

Q. I call your attention to this portion in which you state:

"A letter to the Idaho Refining Company October 27th with reference to the loss ratio was never answered by the Idaho Refining Company or any of its officers, nor any answer made by telephone from the Idaho Refining Company"——

A. That is the one that I referred to that I wrote to the Idaho Refining Company upon receipt of a letter from the vice-president telling me under no condition to renew the policy if another loss had occurred.

Q. I didn't ask the question on the basis of that.

Mr. Penfield: I move, Mr. Examiner, that the answer be stricken.

Trial Examiner Riemer: No, the motion to strike is denied. Put your question again, but if you quote from the letter, please talk slowly.

Q. I wish to ask you if that is a correct statement that no answer was made by the Idaho Refining Company or any of its officers by telephone or otherwise?

A. As I explained this morning, no answer was made to me. There is only two girls left in the office that we had in the employ of the company at that time, and neither one of those received an answer by telephone, telegraph or letter. [981] However, three have left our employment, and the one in the automobile department has left. One of those

(Testimony of Decker Little.)

might have received it, as I mentioned before, and it might not particularly come to my attention, because immediately after I cancelled the policy. However, I have nothing in the file.

Trial Examiner Riemer: You say that there is nothing in the file?

The Witness: There is nothing in the file to show that there was an answer received.

Trial Examiner Riemer: Is there anything in the office files?

The Witness: That is the office files—pardon me.

Mr. Penfield: And I will offer this as Board's Exhibit No. 28.

Mr. Moyle: I have no other objection to it, except that it is immaterial, and just repetition of what the witness has already testified to.

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit No. 28.

(Whereupon the document heretofore marked as Board's Exhibit No. 28 for identification was received in evidence.)

(Testimony of Decker Little.)

BOARD'S EXHIBIT NO. 28

Loyalty Group

Letterhead of

Firemen's Insurance Company of Newark,
New Jersey.

Organized 1855

SALT LAKE CITY BRANCH OFFICE

917 Continental Bank Building

Telephone 4-6417

Salt Lake City, Utah

April 13, 1942

Subject: Policy #FM-227-

Idaho Refining Company

Mr. Wm. A. Babcock, Jr., Attorney

Hotel Whitman

Pocatello, Idaho

Dear Mr. Babcock:

I wish to acknowledge your letter of April 11 with reference to our cancelling the Idaho Refining automobile policy No. FM-227, issued through the Turner Insurance Agency of Pocatello, Idaho.

The letter sent to the Idaho Refining Company October 27 with reference to their loss ratio was never answered by the Idaho Refining Company or any of its officers, nor was there an answer made by telephone from the Idaho Refining Company or any of its officers.

I do, however, see Mr. Gilbert Sheets, who is either President or has been President of the Idaho Refining Company, almost every day due to his

(Testimony of Decker Little.)

being one of our Salt Lake City agents, but the only matter taken up between Mr. Sheets and myself was in regard to the effective time of cancellation of the above captioned policy. The policy contract states cancellation shall be effective 12:01 o'clock A. M. and I extended this time to 12:00 Noon, as of November 17.

I telegraphed the Idaho Refining Company November 10, 1941 and quote telegram:

“Due to High Loss Ratio Experienced on Equipment Owned by Your Corporation for Past Few Years We Are Cancelling Off Policy FM 227 by Registered Cancellation Notice to Be Effective November 17, 1941, Noon, Standard Time. Please Make Other Arrangements for Insurance.”

Our regular cancellation notice was mailed to the Idaho Refining Company and all interested parties on the 12th day of November, 1941, giving the usual five days notice.

In answering the last paragraph of your letter, I wish to state that never once did I ever advise or recommend that the Idaho Refining Company discharge any of its drivers or reorganize its driving crew. This subject was never mentioned or discussed in any way, and had no bearing on the cancellation of the policy.

Very truly yours,

DECKER LITTLE

Decker Little, Dist. Mgr.

DL:M-F

(Testimony of Decker Little.)

Mr. Penfield: Without waiving your objection as to its materiality, can it be stipulated that Mr. Babcock, the person there referred to, is an attorney for the National Labor Relations Board?

[982]

Mr. Moyle: I will so stipulate.

Mr. Penfield: Working on this case.

Mr. Moyle: I will stipulate to that, also. [983]

Redirect Examination

Q. I believe that you discussed with the president of the Idaho Refining Company, Gilbert Sheets, the question of these increasing losses, a number of times?

A. Well, on various occasions no doubt it came up. In fact, I took him to meet with our two vice-presidents on various occasions with regard to continuing this line on, that is, the renewal of Policy FM-199, and then to continue on with Policy FM-227.

Q. Had you imparted information to Gilbert Sheets, the president of the Idaho Oil Company that the policy would be cancelled if these losses continued?

A. Well, I would have to impart that knowledge to him, telling him about these losses and about correcting them.

Q. He knew, as a matter of fact,—

A. He knew without any question that something had to be done.

Q. How frequently did you talk to Mr. Sheets about it?

(Testimony of Decker Little.)

A. Well, just about every time a loss occurred that I was [987] informed about.

Q. With reference to that letter which you said was written about October 27, 1941, did you discuss the contents of that also with Mr. Sheets?

A. I can't recall whether I did or not.

Q. I see. A. I sent that direct.

Q. You also, of course—did you also advise Mr. R. F. Turner, your agent at Pocatello, that the policy would be cancelled if the losses continued?

A. Mr. Turner was advised about this every time I made a trip up here. We discussed the loss ratio.

Q. And he was advised of it, was he?

A. Yes, sir.

Q. Of what?

A. That we wouldn't continue on the risk if the loss ratio continued. We couldn't help it. Remember this, he acted as our agent, and we never go over our agent's head, unless we have to, and when we do, we always advise him of what we have done, and in this case, I was in Mr. Turner's office when I made the decision.

Q. To cancel the policy?

A. To cancel the policy, and I wrote a letter to the San Francisco office, advising them of what I was doing.

Q. Was that what your San Francisco office wanted you to do, [988] if you know?

A. Well, the intimation was that we might not

(Testimony of Decker Little.)

continue on the risk or renew the policy, and the way the vice-president sent it to me was that if we had more losses, to get off of it. [989]

Redirect Examination

Q. (Mr. Merrill): What did your observation of the speed of the two trucks concerning which you have testified have to do with your determination to cancel the policy?

A. Well, when those two things happened, I just felt that that is what was causing the accidents. Whether they had governors on the trucks, I don't know, or whether they were working, but that absolutely made me decide, because we never have a chance of defense if a car is going like that at 60 miles an hour.

Mr. Merrill: That is all. [992]

R. F. TURNER

a witness called by and on behalf of Respondent, was duly sworn and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: R. F. Turner.

Trial Examiner Riemer: And where do you live, Mr. Turner?

The Witness: Pocatello, Idaho.

Trial Examiner Riemer: Thank you.

(Testimony of R. F. Turner.)

Direct Examination

Q. (Mr. Merrill): What is your business, Mr. Turner? A. Insurance, loans and real estate.

Trial Examiner Riemer: Oh, Mr. Turner, I can't hear you.

A. Insurance, loans and real estate.

Trial Examiner Riemer: Thank you.

Q. Are you connected with any incorporated company? A. Just the Turner Agency.

Q. And what office do you hold in that company?

A. I am the president and manager. [999]

Q. As such officer, do you take charge of the insurance matters conducted by the company?

A. Yes, sir.

Q. Now, are you acquainted with the Idaho Refining Company? A. Yes, sir.

Q. Do you know its property? A. Yes, sir.

Q. Are you acquainted with the trucks in a general way, with the trucks and transports and cars of the Idaho Refining Company?

A. I was about a year ago.

Q. What was the nature of that acquaintance?

A. We carried the insurance on them.

Q. In what company did you carry the insurance?

A. We carried the fire, theft and collision in the Firemen's Insurance Company of Newark, New Jersey, and the property damage and public liability in the Metropolitan Casualty Insurance Company of New York.

Q. Was the coverage under one policy or two policies, the various items?

(Testimony of R. F. Turner.)

Q. When was that coverage discontinued?

A. The cancellation notice was sent out November 10, 1941.

Q. Cancelling it as of what date?

A. It gives them five days, that is, the policy continued in force five days after November 10th, then the cancellation was effective. [1000]

Q. There has been some testimony here that the cancellation became effective November 17; what is the fact, if you know, with respect to that?

A. Well, I haven't any record of that. It was my understanding that the company granted an additional time for the Idaho Refining Company to place this insurance in some other company.

Q. Now, have I asked you what companies—I will withdraw the question,—I have.

What property was covered by the policy of which you speak?

A. Well, all of their automobiles and trucks.

Q. By trucks, you mean what?

A. I mean the trucks that transported—well, a truck is anything but a private passenger car. We had some private passenger cars, and the rest were all trucks.

Q. Did it cover trailers? A. Yes, sir.

Q. And transports? A. Yes, sir.

Q. And tanks that were drawn by trucks?

A. Yes, sir.

Q. Now, you spoke of property damage, was there any deductible features on property damage?

(Testimony of R. F. Turner.)

A. No, there is no deductible on property damage. It covered the full five thousand dollars on any one accident.

Q. That is, of either——[1001]

A. Of property damage, damage to other people's property.

Q. Other people's property, yes. Now, with respect to the property of the refining company, was there deductible features with respect to that?

A. Yes, on the private passenger cars we had \$50 deductible.

Trial Examiner Riemer: What was that?

The Witness: On private passenger cars we had \$50 deductible; on the trucks and trailers, we had \$100 deductible.

Q. Now, assume, Mr. Turner, that a truck was drawing behind it a trailer, and that there was an accident to both the truck and trailer in which each were injured, what would be the nature or the manner of computing the deductible part of the loss?

A. We have to figure the replacement cost of the truck or tractors and the replacement cost of the trailers. When that was arrived at, then we would take and deduct the \$100.

Q. Would the \$100 be deducted from the truck and \$100 from the trailer, or \$100 from the group?

A. No, ordinarily they were insured as one unit. I think that it is one coverage there, where we had the trailers insured, but ordinarily the trail-

(Testimony of R. F. Turner.)

ers hooked onto what is called the tractor or truck and that is considered one unit.

Trial Examiner Riemer: So there would be only \$100 deductible?

The Witness: Yes, only \$100 deductible.

Q. (Mr. Merrill, continuing): Are you sure of that, Mr. Turner? [1002]

Do you have in your possession anything from which you can refresh your recollection on that point?

A. Yes. I am mistaken on that.

Q. Yes. What is the fact?

A. Well, there is \$100 deducted on the truck, and there is various amounts deducted on the trailer.

Q. What are those various amounts?

A. Well, there is \$48, \$35, \$30,—wait a minute. It is \$100 deductible.

Q. On what?

A. On the truck. We will take, for instance: here is a 3000 gallon tank and a semi-trailer. That carries \$100 deductible. That is just one unit. And according to this way, so far as I can gather here, now, we insured the truck and then we insured the trailer, and there was \$100 deductible on each one of them.

Q. Yes.

A. Yes, I was thinking of another policy.

Q. You find that is the fact?

A. That is the fact.

(Testimony of R. F. Turner.)

Q. So, with this particular policy, there was \$100 deductible on the trailer and \$100 deductible on the truck? A. Yes.

Q. And if there should be a loss exceeding \$100 to each where the two are connected going along the road, there would be \$200 [1003] deductible? A. Yes, sir; if both were injured.

Q. And that would have to be—and the Refining Company would stand that \$200 loss?

A. Yes, sir.

Q. Yes. Now, Mr. Turner, what was the number of the policy that was covered that you say was cancelled? A. That was FM-227.

Q. When was it cancelled?

A. The cancellation notice was sent November 10th, and according to the notice, it should have been cancelled out on November 15th. As I stated, however, I understand they were granted additional time.

Q. Did you know anything about a telegram that was sent to the Idaho Refining Company touching the cancellation?

A. Yes, I did. I received a copy of it.

Q. I hand you what has been introduced in evidence as Board's Exhibit No. 22, and ask you if that is the telegram, a copy of which you received? A. Yes, that is it.

Q. I call your attention there to the fact that the cancellation is as of November 17th, 1941; is that right? A. That is correct.

Q. What were the—when was the decision made,

(Testimony of R. F. Turner.)

if you know, for the cancellation of the policy FM-227? [1004]

A. Well, the first notice that I had of it was just a correspondence and discussing the matter with Decker Little, but the first actual notice I got was when I got a copy of the cancellation.

Q. You know Decker Little? A. Yes, sir.

Q. And what relation does he have in the business?

A. He took over the office as general manager of the company for the District.

Q. Was he in your office shortly before or at the time the decision for the cancellation was made?

A. I wouldn't remember the exact date. Mr. Little is in our office twice a month, if not three times a month, right straight through.

Q. At the time that he was in your office on November 10, 1941, was there any decision arrived at between you and Mr. Little touching the cancellation of the policy?

A. I am not so positive as to the date, but there was a discussion between Mr. Little and myself, that they were going to cancel the policy, and that discussion we had several times during the year.

Q. Why was the decision made to cancel the policy? A. Because of the high loss ratio.

Q. Explain what you mean by high loss ratio.

A. The number of losses, and the amount of losses that we were paying out. It made [1005] it undesirable to continue on the risk.

Q. What was the character of the losses?

(Testimony of R. F. Turner.)

A. Mostly collision. As I recall, there was one public liability claim, and there was possibly three or four small property damage claims, but the big part was loss by collision.

Q. Do you know to what the losses were due?

A. The reports that I got from the adjusters were "negligence of drivers".

Q. Was that the fact in most cases?

A. Practically every case.

Q. Now, how were those losses adjusted and determined?

A. Some of them were handled through the Fire Insurance Adjusters Bureau and some through the Nichols Adjustment Bureau of Salt Lake.

Q. Where is the Fire Insurance Adjusters Bureau located?

A. They are located,—There is one in Pocatello, and the losses around Twin Falls went to Twin Falls, and those around Boise to the Boise office.

Q. Do you know of any of these losses yourself? Were they reported to you?

A. Practically all reported to me.

Q. Can you give us a statement of them?

A. I have the memonanda here.

Q. What is that, please?

A. That is just practically the date, showing the loss and whether property damage or collision, and ordinarily I think that [1006] I have got the name of the drivers.

Q. On your policy FM-227, what information do you have touching the losses?

(Testimony of R. F. Turner.)

A. The amount of the loss——

Q. The date, amount of loss and driver?

A. Yes.

Q. Will you give it to us, please?

A. Well, on October 22, 1941, there was property damage claimed; the driver was Crawshaw; the amount we paid was \$26.45. The statement was "admitted liability". In other words, the company admitted liability.

Q. That is the insurance company?

A. Yes. On November 5, 1941, we had a collision loss, Patterson was the driver; the amount paid was \$625. I have a notation "carelessness" after that loss.

On October 24, 1941, we had property damage claim, White was the driver. We paid \$215——

Q. Is that White or Whitesides?

A. I have got it here "White" is all the memoranda I have.

Q. I see.

A. Then on October 24, 1941, we have—this is the same loss, but that was collision, and what—in other words, we had a property damage claim and a collision claim under the same loss.

Q. Yes. [1007]

A. We paid \$249.04 under the collision, and on October 4, 1941 we had a property damage claim, having paid out \$90.35 on September 6th.

Trial Examiner Riemer: Who was the driver there? Do you have it?

(Testimony of R. F. Turner.)

The Witness: The driver—let's see—Zollmers, is the way I have it here. On September 6, 1941, we had a property damage claim, the name of the driver was Ellingford; we paid out \$112.50; on October 16, 1941, we had a property damage claim, Douglas was the driver; we paid out \$90.40.

On October 16, 1941, we had a collision loss,—this is the same loss again, both property damage and collision——

Q. Douglas was the driver?

A. Douglas was the driver. On the collision we paid \$1726.36. On September 12, 1941, we had a property damage claim, Whitesides is the driver. We paid \$50. And along with that loss, we had a collision loss, the same date, the same driver, and we paid out \$1044.10.

Q. And the cause?

A. Carelessness. In fact, all of these have the memoranda "Carelessness" after them.

On August 31, 1941, we had a property damage claim—that don't amount to anything. Conrad was the driver. We only paid out \$7.

On September 12, 1941, Whitesides was the driver, Collision [1008] loss, paid out \$1000 on that.

Mr. Penfield: What was that date?

A. September 12, 1941.

On October 24, 1941, we had a collision loss. I have White as the driver here on that one, \$315,—

Trial Examiner Riemer: What was that last one, please, Mr. Turner?

(Testimony of R. F. Turner.)

The Witness: The date was October 24, 1941, collision loss, White was the driver, and we paid out \$315.

Q. May that have been Whitesides, or do you know?

A. It might have been. I don't recall now.

Q. What memorandum do you have as to the cause?

A. I don't have any memorandum as to the cause.

Q. I see. Now that extended over a period, I believe, as I remember your testimony, of about two months?

A. September, October and in November.

Q. The 5th of November was the last?

A. Yes, sir.

Q. And how many accidents were there in that period of time?

A. There would be 11 accidents, although we had 13 claims there, you see, between the collision and the property damage.

Q. Now, wherever—I will withdraw the question. In each one of those instances,—

Trial Examiner Riemer: What figure did you give?

A. I gave you 13 losses with 11 accidents. [1009]
That is, 13 claims, with 11 losses.

Trial Examiner Riemer: That seems right.

Q. (Mr. Merrill, continuing): Now, Mr. Turner, in determining the advisability of continuing on with the policy, is it the amount of the losses or

(Testimony of R. F. Turner.)

the number of accidents that is most determinative?

A. The number of accidents has just as much to do with it as the amount of the losses.

Q. And the reason why?

A. Well, it costs just as much to adjust a \$50 claim as a \$1,000 claim, and when it goes back into the records, it takes just as much bookkeeping, just as much as for a \$1,000 claim. It just shows that if the losses continue, you are going to get some big losses.

Q. What in your experience as an insurance man is the likelihood of heavy losses where there are numerous small losses?

A. It is certain that you are going to get some heavy losses.

Q. Now, in every one of those losses which you have mentioned, it is a fact, is it not, that the refinery company absorbed at least \$100 on each one of those losses?

A. Each one of the collision losses, yes, sir.

Q. Of the collision losses? A. Yes, sir.

Trial Examiner Riemer: Except in the case of private cars where there is only \$50? [1010]

The Witness: Yes.

Q. (Mr. Merrill, continuing): Were there any private cars reported here?

A. As I remember it, we never had a loss under a private car with the exception of one broken windshield. I think that is all that we ever had.

Trial Examiner Riemer: At least one of the

(Testimony of R. F. Turner.)

figures you gave on the list involved a private car, did it not?

The Witness: No, I had no losses under any private cars due to collision or upsets.

Q. As a matter of fact, the losses were always trucks? A. Entirely with trucks.

Q. Now, Mr. Turner, how would those losses be ascertained and adjusted?

A. Well, we would refer them, as I say, to the Fire Insurance Companies Adjustment Bureau. Ordinarily I would refer all losses to the Pocatello office, and they would in turn assign them to Twin Falls and Boise, and they would go out and determine the amount of the loss.

Q. When did the policy which was cancelled take effect?

A. It was on August 22, I believe, 1941.

Q. Was there a policy written by you preceding that policy? A. Yes, sir.

Q. And what was the number of that policy?

A. I think that was FM-199, as I remember it. Yes, FM-199. [1011]

Q. How long was that in effect?

A. That was written August 22, 1940 and expired August 22, 1941, and then renewed.

Q. Were there losses under that policy?

A. Yes, sir.

Q. What were they, if you know?

A. I have got a record here of a part of them, at least. There are five losses here that I have a record here of.

(Testimony of R. F. Turner.)

Q. And who were the drivers and when did the loss occur?

A. Well, on December 12, 1940, there was a collision loss, Henricksen was the driver, and we paid out \$298.53. There must have been property damage and collision both for that loss.

Q. Yes.

A. Our collision loss was \$1250. On June 10, 1941,—

Trial Examiner Riemer: Excuse me. Will you repeat that again, please? What was your property damage?

The Witness: The property damage would be \$298.53, and the collision damage was \$1250.

On June 10, 1941, we had a collision loss, Pearson was the driver, we paid out \$299. On December 11, 1940, we had a property damage loss, Henricksen was the driver; we paid out \$250.

On May 15, 1941, we had a collision loss, it looks like "Cornia" was the driver. [1012]

Q. Yes.

A. We paid out \$2500 on December 11, 1940. We had a collision loss and a public liability claim at the same time,—

Q. What was that date, please?

A. December 11, 1940, Henricksen was the driver on that. We paid out two thousand—

Trial Examiner Riemer: That was on public liability?

The Witness: As I remember that—I remember the loss. It seems to me we just made a settlement

(Testimony of R. F. Turner.)

there, but I don't seem to have the amount of the collision claim on there, but I know that there was a collision claim on the truck, because I saw the truck.

Q. How many losses under that policy did you have? A. I have a record of five.

Q. Now, you made mention of the fact a few moments ago that these losses were so far as you have a record of them. Do you mean by that that there may have been other losses of which you have no record?

A. There might have been other losses.

Q. There has been testimony here in the case of losses by Stanley Merrill, driver. I didn't hear you read his name.

A. I don't seem to have his name.

Q. There would be other losses if he had losses, also?

A. Yes, for this reason: some of these losses were reported to Boise and they would send the claims direct to Salt Lake, and I [1013] would get no record of them.

Q. How would the losses usually be reported to you? A. Generally by telephone.

Q. Now, did you ever have occasion to comment upon the losses to any of the officers of the Idaho Refining Company?

A. Yes, sir; at various times.

Q. When did you commence doing that?

A. Just before the expiration of policy FM-199,

(Testimony of R. F. Turner.)

because that [1014] policy was coming up for renewal and I think that I was talking to Mr. Gilbert Moyle, and I think that Mr. Webb was in the office at that time.

Then I talked to Kermit Rice several times.

Q. What has been the information which you have given them?

A. I simply told them that if the losses continued, the company would undoubtedly cancel out. [1015]

Trial Examiner Riemer: Mr. Merrill, will you excuse me, but before we go on here, while the witness has the record before him, will you go back to your record of losses under Policy FM-227, Mr. Turner, and tell us again the second loss or that one occurring November 5, 1941?

The Witness: Patterson was the driver.

Trial Examiner Riemer: Do you have his first name? [1016]

The Witness: I haven't the first name of any of them.

Trial Examiner Riemer: And that was the collision, and the loss paid was \$625?

The Witness: \$625.

Trial Examiner Riemer: Do you know where it occurred?

The Witness: I haven't got the record on that.

Trial Examiner Riemer: All right. Thank you.

A. The Fire Insurance Adjustment Bureau adjusted that.

(Testimony of R. F. Turner.)

Trial Examiner Riemer: But the driver was Patterson?

The Witness: Patterson is the way I have it, yes, sir.

Trial Examiner Riemer: I am sorry to have interrupted, Mr. Merrill.

Mr. Merrill: That is all right. You may cross examine.

Cross Examination

By Mr. Penfield:

Q. Mr. Turner, do you know that there were a number of the drivers who had never had any accidents?

A. We didn't have any connection with the drivers, whatsoever.

Q. Did you check into that matter or make any investigation of it? A. No, sir.

Q. The only thing that you were concerned with was the total number of losses?

A. That is correct.

Q. It also didn't concern you whether these losses were on equipment that was owned by the Idaho Refining Company or the Covey Gas & Oil Company or the Idaho Gas & Oil Company, is that [1017] correct?

A. That is correct, because we had them all covered under one policy.

Q. It was the aggregate of losses for the whole thing that concerned you?

A. Yes, sir. I never checked into it to see whether some of these losses came under the Covey end of it or the other.

(Testimony of R. F. Turner.)

Q. Did you ever make any suggestion to any one connected with the company in regard to the discharge of drivers? A. No, sir.

Q. Have you any way of knowing from your notes whether or not these losses which you referred to were on trucks of the Idaho Refining Company or the Covey Gas & Oil Company or the Idaho Gas & Oil Company?

A. I wouldn't be able to state from this record here, no.

Q. I believe that you testified from your notes in regard to an accident involving Boyd Cornia. I understand you to say that that was collision damage?

A. I would guess it was collision damage. I haven't any memoranda upon it. It was a \$2500 loss, and was,—I don't recall but the one such claim.

Q. You don't recall but the one?

A. That is the only one I can recall at this time.

[1018]

Redirect Examination

By Mr. Merrill:

Q. Mr. Turner, you advised counsel who just asked you, that your information that the losses were due to carelessness of the driver came to you from the investigators? A. Yes, sir.

Q. As a matter of fact, the company acted upon that information, did it?

A. Yes, sir; we accepted those reports. [1020]

Q. You accepted those reports as true?

A. That is correct.

(Testimony of R. F. Turner.)

Q. The investigators—are the investigators employed by the company or not?

A. No, they are——

Trial Examiner Riemer: What company?

Mr. Merrill: I beg pardon. By the insurance company.

A. The adjusters are employed by the Fire Insurance Companies' Adjustment Bureau.

Q. And they are an independent concern?

A. Yes, sir.

Q. To whom do you refer the matter of losses and accept their reports? A. Yes, sir.

Q. In other words, they run an adjustment office and adjust for all companies,—adjust for other companies than yours? A. Yes, sir.

Q. I understood you to say that a large portion of this equipment covered by the policy was new equipment?

A. A great many of the trucks were new equipment, yes.

Q. And generally your information was that they were in good condition? A. Yes, sir.

Q. New and used?

A. New and used. [1021]

Recross Examination

By Mr. Penfield:

Q. As a matter of fact, Mr. Turner, the insurance company is not ordinarily concerned with the cause of an accident, whether due to the driver's carelessness or not, they have to pay anyway?

(Testimony of R. F. Turner.)

A. They have to pay.

Q. It is the number of losses——

A. The number of losses and the amount paid, both combined.

Q. Do you know how many trucks the company has?

A. I couldn't tell you now how many. I could tell how many they had when we first wrote the policy.

Q. Well, that is what I mean.

A. These have been changed from time to time. There were 55 items on the policy when we first wrote it.

Q. Is that the policy that was cancelled?

A. Yes, sir.

Trial Examiner Riemer: 55 items, that included trucks and trailers?

The Witness: Trucks and trailers and passenger cars. [1022]

H. F. BENSON

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: H. F. Benson.

Trial Examiner Riemer: Where do you live, please?

(Testimony of H. F. Benson.)

The Witness: Salt Lake City.

Trial Examiner Riemer: Thank you.

Direct Examination

By Mr. Moyle:

Q. What is your business, Mr. Benson?

A. I am in the insurance business. [1028]

Q. How long have you been employed in the insurance business or engaged in it?

A. I have engaged in it for about 25 years.

Q. And what is your present activity in reference to insurance?

A. I am a general agent. If I were in the grocery business, I would be called a wholesaler.

Q. And where is your business located?

A. My headquarters are in Salt Lake.

Q. And you cover what territory?

A. Utah and Southern Idaho and part of Nevada and part of Wyoming.

Q. And under what name do you operate?

A. Benson Corporation.

Q. And what position do you hold in that corporation? A. President and manager. [1029]

Q. Was the cancellation of the Idaho Refining Company's policy by the Firemen's Insurance Company of Newark, New Jersey called to your attention at any time in November of 1941?

A. Yes, sir; about that time. [1031]

Q. And by whom?

A. One of my agents in Idaho.

Q. What is his name?

A. Mr. Sweeney, at Idaho Falls.

(Testimony of H. F. Benson.)

Q. And what did he tell you?

A. He told me that the risk had been cancelled off by the Firemen's Insurance Company and the reason why, and he asked me if I would consider writing it providing the cause of the losses was removed—that wasn't the exact language I am giving you, since I don't recall exactly what was said.

Q. And what did you say to him?

A. I said "yes", if we could have reasonable assurance that the cause of the bad loss experience had been removed, we would be glad to consider it.

Q. What did you understand to be the cause?

A. I understood they had some reckless driving up here.

Q. Now, what, if anything further, did you do in reference to this matter?

A. I believe that I told Mr. Sweeney that I would like him to make a personal investigation. He had told me in the first place that the drivers who have had the accidents had been discharged, and I asked him if he knew that to be a fact. I believe that he called me on the phone about it the first time, and then I asked him if he knew that to be a fact, and he said that is what he understood, and I asked him if he would make a personal [1032] investigation and ascertain if it was a fact, and if it was a fact, we would be glad to submit a quotation, on the risk.

Subsequently, I think he called me back on the phone again and said that it was true, that the drivers who had been having the bad experiences

(Testimony of H. F. Benson.)

had been discharged, and that they had a new set of drivers.

Q. Now, can you fix the date of the first conversation with Mr. Sweeney, or any of these conversations that you had with him?

A. Well, only approximately. I can establish it within a matter of two or three days, I think.

Q. All right, if you will, please.

A. It would have been somewhere around the 20th of November, 1941, possibly a little bit earlier than that.

Q. And——

Trial Examiner Riemer: Excuse me, but will you fix the sequence of these conversations?

Q. What is that first conversation—when did Mr. Sweeney first call you?

A. It would have been somewhere approximately the 20th—I can't fix the date within three or four days, one way or the other.

Q. And until what date, if you can tell me, did your negotiations with Mr. Sweeney continue in reference to this matter?

A. We submitted a quotation dated November 24 on the risk. [1033]

Q. So that these various conversations that you had with Mr. Sweeney were according to your best recollection between the 20th and 24th?

A. Pardon me,—I will have to correct that. Here is a letter from Mr. Sweeney dated November 17th, so the conversation would have been prior to that time, probably be around somewhere between

(Testimony of H. F. Benson.)

the 13th and 15th,—around in there,—because this first letter is dated November 17th.

Q. So that somewhere between those dates, that is up to November 24th, these various conversations occurred? A. That would be right.

Q. And you say you did submit a proposition by which you would insure the Idaho Refining Company?

A. Yes, or rather, to put it more exactly, Mr. Sweeney submitted it on my behalf. He submitted it over his own signature, but we wrote the letter in our office for him to sign.

Q. Will you state now upon what, if any, representations of the Idaho Refining Company your proposal was based?

A. Well, I had known something of that risk for a number of years, and I had never heard anything particularly bad about the loss experience until about the last year prior to this period that we are talking about, and when a risk—that is almost an axiom in the insurance business, when a risk that has been good before suddenly goes sour, there is some definite [1034] reason for it, and in the course of my conversations with Sweeney, and my investigations, I got a very clear understanding that it was due to careless driving, and I naturally in submitting my quotation, I wanted to be very sure that those troubles had been removed, otherwise, we didn't want the risk at any price.

Q. I will ask you to state in that connection whether or not if the drivers involved had not been

(Testimony of H. F. Benson.)

discharged, would you have considered the writing of this insurance under any circumstances?

A. No, sir.

Q. You did not finally write the insurance?

A. No.

Q. And you have no interest in this case?

A. No, sir.

Q. And are not now, and never have been, interested in any insurance which this company carried?

A. No, sir.

Mr. Moyle: You may cross examine.

Cross Examination

Q. (Mr. Penfield) Mr. Benson, what if any, investigation does your company make of drivers prior to issuing a policy?

A. You mean in this specific case? Or ordinarily?

Q. I mean, what is your general practice?

A. Ordinarily, none at all. [1035]

Q. You don't make any investigation?

A. No, sir.

Q. In this particular case,—

A. Pardon me—let me say that at times, we do make an investigation of the loss record.

Q. You do make an investigation of the loss record?

A. Exactly; if it is bad, we inquire into the reasons for it.

Mr. Moyle: If I might interrupt you, Mr. Penfield, I had intended having a letter marked as an

(Testimony of H. F. Benson.)

exhibit and put in evidence by this witness, if I might.

Trial Examiner Riemer: May he interrupt your examination, Mr. Penfield, and do that?

Mr. Penfield: Yes.

Trial Examiner Riemer: Where is the letter?

Mr. Moyle: I have the letter right here, the copy that we received.

(Whereupon the document hereinabove referred to was marked as Respondent's Exhibit 5 for identification.)

Q. (Mr. Moyle) I show you what has been marked as Respondent's Exhibit No. 5 for identification, and ask you if that is the letter to which you referred as having been sent?

A. That is the letter written in my office for the signature of my Idaho Falls Agent.

Q. Did you dictate that letter? [1036]

A. I did.

Q. Does it bear the signature of the Idaho Falls Agent? A. It does.

Mr. Moyle: We offer in evidence Respondent's Exhibit 5 for identification.

If it is accepted or received in evidence, we ask leave to have it copied and two copies substituted and the original withdrawn.

Trial Examiner Riemer: You may do that.

Mr. Penfield: We have no objection.

Trial Examiner Riemer: May I see it, please?

(Mr. Penfield hands letter to Trial Examiner Riemer)

(Testimony of H. F. Benson.)

Trial Examiner Riemer: It may be admitted and marked in evidence as Respondent's Exhibit No. 5.

(Whereupon the document heretofore marked as Respondent's Exhibit No. 5 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 5

(Cut)—United Pacific

United Pacific

Insurance Company

Exchange Building

Seattle, Washington

Associated Agencies Inc

General Agencies

308 McCornick Building

Salt Lake City

November 24, 1941

Idaho Refining Company

Pocatello, Idaho

Gentlemen:

Please consider my quotation for writing automobile insurance on the fleet of vehicles owned by the Idaho Refining Company, the Idaho Gas & Oil Company and the Covey Gas & Oil Company as follows:

1. Bodily Injury with \$100,000/
\$100,000 limits and Property Dam-
age with \$5000 limit—total annual
premium \$3393.10
2. Fire Insurance (Comprehensive
Fire and Theft on passenger cars

(Testimony of H. F. Benson.)

only) according to your valuations
and Collision insurance on de-
ductible basis exactly as carried in
your previous policy—total annual
premium 5772.23

Total Quotation \$9165.33

The Bodily Injury and Property Damage as quoted above will be written in the United Pacific Insurance Company, which is the largest single carrier of this class of insurance in the intermountain country. This company carries insurance for the State of Utah, State of Idaho, Salt Lake City, Ogden City, Idaho Falls, Pocatello, Burley and many other municipalities. It provides adequate claim service with its own claims adjustor in Salt Lake City.

The Fire, Theft and Collision will be written in another company but arrangements will be made for the same adjustor to handle all claims.

These quotations are submitted with the understanding that you have discharged all drivers in your employ prior to October 17, 1941 and that none of these old drivers will be rehired.

Please accept my thanks in advance for any consideration you may be able to give my quotation.

Yours truly,

DAVID M. SWEENEY,

David M. Sweeney

Agent

Mr. Moyle: Thank you very much. That is all.

Q. (Mr. Penfield) (To the reporter) Will you

(Testimony of H. F. Benson.)

read me the last question and answer, Mr. Reporter?

(Whereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) And when you inquire into the reason, do you inquire into the individual drivers?

A. Not unless we ascertain from our investigation that some one or more particular drivers have been responsible for the bad [1037] loss ratio. If we found that condition to be true, we would either refuse to write the business at all, or we would demand that the drivers be removed.

Q. That would be just with respect to particular drivers, is that correct?

A. Certainly. I don't recall that I ever had such a situation arise where more than one driver was involved, before.

Q. In this particular case, you stated that you had heard that the Idaho Refining Company had a bad record from gossip that went around the insurance companies, is that correct?

A. Yes, sir.

Q. But your advice that the policy that the Firemen's Insurance Company of Newark, New Jersey had been carrying had been cancelled, that was received from Mr. Sweeney?

A. Yes, that was the first knowledge that I had that they had cancelled off.

(Testimony of H. F. Benson.)

Q. And at this time, Mr. Sweeney told you that the drivers had been discharged? A. Yes.

Q. And your only knowledge about the drivers had come from gossip?

A. No, my knowledge about the drivers came from Mr. Sweeney.

Q. Perhaps you misunderstood me. I mean with regard to whether the drivers were careless or not?

A. I think that it came from Mr. Sweeney, so far as I can [1038] recall. I don't know that I had ever heard any reason for the bad experience through the gossip that I heard; in other words, I wasn't much interested in it.

It was rumored around that somebody was having a bad loss experience on it, but I didn't inquire into it until it came up to me to make a quotation on it.

Q. So Mr. Sweeney told you that the drivers had been discharged and they had employed all new drivers? A. Yes, sir.

Q. He didn't tell you anything about the individual accident record of any driver, did he?

A. No, sir.

Q. You didn't know whether some of them had never had an accident, or whether they had had an accident? A. No, sir.

Q. And that was after the insurance had been cancelled, was it not?

A. I believe that is right.

Q. And he told you that the drivers had been discharged?

(Testimony of H. F. Benson.)

A. If I remember correctly, I believe he told me that the company had served cancellation notice, but had agreed to give the Idaho Refining Company some extra time to place their insurance elsewhere.

I think that that was the situation.

Q. Now, you stated that it was upon the basis of this [1039] representation that the drivers had been discharged that you were led to make this offer, is that correct?

A. That is true, yes, sir.

Q. Did you know anything about the new driving crew? A. No.

Q. Did you know anything about the care with which they were to be chosen, their qualifications?

A. No,—well, pardon me, let me correct that. I was told that the new drivers were going to be given a course of training of some sort, some special training course.

Q. Who told you that?

A. In the handling of these transports, these big units.

Q. Who told you that?

A. Mr. Sweeney told me that.

Q. And it was partly on that representation that you made this offer, was it not?

A. That had a bearing, yes. It led me to suppose that probably the new drivers would at least be competent.

Q. But other than that, you didn't know anything about the new drivers? A. No, sir.

Q. And you didn't know for sure whether—

(Testimony of H. F. Benson.)

other than what Mr. Sweeney told you—whether all the old drivers had been careless or any of them had been careless?

A. I didn't know. Let me interpolate something right there, if [1040] you don't mind. Supervising general agents of a company, and managers, necessarily have to place a great deal of reliance on information given them by their field men, by their agents; when an agent tells you that such and such a condition exists, you depend on it; we feel that it is correct, and an agent is very careful about what he tells, therefore, when Mr. Sweeney gave me the information, I assumed that he knew what he was talking about, although I did ask him to investigate and be sure that it was true.

Q. But you were the one who was responsible for making the offer set forth in the letter which is Respondent's Exhibit No. 5? A. Yes, sir.

Q. And that was prepared under your direction?

A. That is right. [1041]

WALTER W. WATKINS.

was thereupon called as a witness by and on behalf of Respondent, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: My name is Walter W. Watkins.

(Testimony of Walter W. Watkins.)

Trial Examiner Riemer: And where do you live, Mr. Watkins?

The Witness: I live in Salt Lake City, Utah.

Trial Examiner Riemer: Thank you, Mr. Watkins.

Direct Examination

Q. (Mr. Moyle) What is your business, Mr. Watkins?

A. I am in the general insurance business.

Q. And under what name do you do business?

A. We operate as the Selbach Insurance Agency.

Q. That is an agency located in Salt Lake City?

A. That is correct.

Q. And has been such for how long?

A. Since 1912.

Q. Continuously? A. Yes, sir.

Q. How long have you been associated with this agency?

A. I have been with the Selbach Insurance Agency since 1926.

Q. And what position do you now hold with that agency?

A. I am one of the two partners of the Selbach Insurance [1042] Agency.

Q. When did you become such?

A. The Selbach Insurance Agency was a corporation until some five years ago, and at that time, I was secretary. We formed a partnership about five years ago.

Q. And you have been a partner continuously since then? A. That is right.

(Testimony of Walter W. Watkins.)

Q. And you are now? A. Yes, sir.

Q. Calling your attention to November of 1941, did you have occasion to look into the insurance matters of the Idaho Refining Company?

A. I did.

Q. And what was that occasion?

A. On November 15, Saturday, Mr. James D. Moyle called me and explained to me that the Idaho Refining Company insurance was being, or had been, cancelled, and asked me if I could do anything in order to provide any insurance.

Q. What did you do?

Mr. Penfield: Council, I believe he stated James D. Moyle.

Q. This James D. Moyle is a friend of yours?

A. Yes, sir.

Q. Of Salt Lake City?

A. Yes, sir.

Q. He went to school with you? [1043]

A. Yes, sir.

Q. Belonged to the same fraternity?

A. Belonged to the same fraternity.

Q. And he is a brother of Henry D. and Gilbert D. Moyle? A. I believe so.

Mr. Penfield: Thank you, counsel.

Q. Now, so far as you know, does he have anything to do with the Idaho Refining Company?

A. No, I believe not.

Q. You understood that what he told you, he told you as a friend? A. That is right.

Q. What did you then do, if anything?

(Testimony of Walter W. Watkins.)

A. He asked me if I wouldn't call his brother Gilbert at Pocatello and see if I couldn't do something to provide insurance for them. He said their insurance was being cancelled, that is, the Idaho Refining Company's insurance was being cancelled, and they didn't want to operate without insurance, and he asked me if I couldn't do something towards providing that insurance.

Q. And what, if anything, did you do?

A. I immediately called Mr. Gilbert Moyle at Pocatello.

Q. What did you say to him?

A. I explained to him that Mr. James D. Moyle had called me and advised me of this cancellation, and asked him if I couldn't be [1044] of some service to him?

Q. What did he say?

A. He said he would appreciate it very much if I would. I was quite surprised. That is the first time I ever heard of anybody asking an agent to try to provide insurance; it is usually the other way around.

Q. What did you do then, if anything?

A. I asked him, of course, why the insurance was being cancelled.

Q. What did he tell you?

A. Bad loss ratio, and I asked him if he would send me a list of the cars contained in the fleet schedule so I could submit it to my company for their entertainment.

(Testimony of Walter W. Watkins.)

Q. What else, if anything, did he tell you about the cause of the cancellation?

A. He said that it was the frequency of the accidents.

Q. And did you know anything about this line, independently of what Mr. Moyle told you?

A. Oh, just as Mr. Benson said, it is just hearsay on the street. I had heard of it. I had knowledge of the line. I didn't know the experience; I knew who carried the line, and I had heard that it was not too desirable.

Q. Did Mr. Moyle tell you anything about—or did you discuss with him about what the future situation would be?

A. Yes, sir. [1045]

Q. What was said?

A. Mr. Gilbert Moyle explained to me that he was—or had discharged the drivers of the transport units, and that he was going to install a safety campaign, and would pay a bonus to drivers who did not have accidents, in an effort to cut down on the loss frequency.

Q. Now, what did you do—or do you remember any further discussion with Gilbert Moyle, anything further he told you?

A. I don't recall offhand. I asked him if he would send me a list of cars. It was on a Saturday, and on Sunday I went to our post office box, and there was the old policy, that is, the policy which was to be cancelled of this Metropolitan Casualty Insurance Company of New York.

(Testimony of Walter W. Watkins.)

Q. Do you remember whether that was Policy No. FM-227?

A. I wouldn't remember that. It looked to me like the original policy. It was signed by the Turner Agency, and had all the cars, that is, it had a complete list of all of the units on the policy.

Q. And in what company was it written?

A. Loss combination in the Firemen's Insurance Company of Newark, New Jersey and the Metropolitan Casualty Insurance Company of New York.

Q. All right. After you received this policy, what did you do?

Trial Examiner Riemer: Excuse me for interrupting. You got [1046] that on Sunday, November the 16th?

A. That is right, Sunday, November 16th.

Q. Then what did you do, Mr. Watkins?

A. I took the policy home and looked it over, studied it over for a few hours, and then the next morning I took the matter of rewriting it up with the Kolob Corporation of Salt Lake City. They are general insurance agents in Salt Lake City.

Q. What representations, if any, did you make to them, concerning the situation?

A. I told Mr. Salisbury,—he is the manager of the Kolob Corporation—as an inducement to—I explained to him that the Idaho Refining Company was getting new drivers, and intended to install this safety campaign wherein they would pay bonus rewards to drivers who were not involved in acci-

(Testimony of Walter W. Watkins.)

dents, and Mr. Salisbury took the matter up with the Denver office. He didn't have the loss experience, if I remember correctly. Mr. Gilbert Moyle gave me, as nearly as he could, the loss experience, and it was very heavy.

Q. Now, after that, you—did Mr. Salisbury write the policy, or did he authorize you to write it?

A. No, Mr. Salisbury then—he had some other information as to the loss experience that he had gotten elsewhere and he—I don't know where *the* got the information, but he knew something of the line, knew it was a hot line, as Mr. Benson calls it, so Mr. Salisbury then called the branch office of the company at [1047] Denver, and asked if we couldn't put it under binder for a few days, that the insurance was out on November 17th,—this was November 17th when I talked with Mr. Salisbury, and we got authority from the Denver branch office to issue a ten-day binder on this risk.

Q. That was issued when, Mr. Watkins?

A. That was issued on Monday afternoon, November 17th.

Q. And what did you do with that binder?

A. That binder was taken down to you in the Boston Building—the Newhouse Building.

Q. And you further investigated the risk and the company and so forth during this ten-day period?

A. No, sir; we didn't.

Q. That is, I mean either you or Mr. Salisbury?

A. Our investigation was made sometime in January.

(Testimony of Walter W. Watkins.)

Q. Well, was there more than one ten-day binder,—strike that, Mr. Reporter. When did you actually issue and deliver the policy?

A. The business was given to our office on November 24, and we,—in having to secure and write this policy, we were required to give another ten-day binder effective November 27th. There was a ten-day binder from November 17th, and we issued a second ten-day binder effective November 27th.

Q. When was the policy finally issued?

A. The policy was finally issued November 28th.

[1048]

Q. And when was it delivered to the Refining Company?

A. The policy was finally sent to the Idaho Refining Company December 2nd.

Q. And that policy was dated back to the 17th of November to cover the period which you had already covered by binder?

A. That is right.

Q. You heard Mr. Salisbury discuss this matter over the telephone with Denver?

A. I was in his office at the time he discussed it.

Q. And what representations did he make to Denver?

A. He explained to Mr. Lou Gerding, the branch manager, that this line was being cancelled by the Metropolitan Casualty Insurance Company. He explained to him that it was because of the high loss ratio and frequency of accidents, that we had been assured that there was to be a new set of drivers on these transport units. I think that there were

(Testimony of Walter W. Watkins.)

—if I remember right, I think Mr. Moyle told me there were some 17, in that neighborhood, 17 or 18, I believe he said, and Gerding, if I remember correctly, called us back and said it was all right to issue a binder for ten days.

Then we figured the premium on the risk and submitted it to you for approval, and it was given to us on November 24th.

Mr. Moyle: You may cross examine. [1049]

Cross Examination

Q. Did you know anything about the accident record of any of the drivers of the Idaho Refining Company?

A. The accident record of the individual drivers?

Q. Yes. A. I did not.

Q. You never made any investigation into that, did you? A. No, sir.

Q. So, for all you know, there might have been only a few of them who were involved in the accidents?

A. It could be that one of them had all of the accidents.

Q. So far as you know?

A. That is right.

Q. The only thing that you would know about it was the loss ratio, is that correct?

A. I didn't know the ratio; I knew of the frequency; I knew that there were many accidents.

Q. As a matter of fact, you didn't know whether these accidents involved the tank trucks driven by

(Testimony of Walter W. Watkins.)

the Idaho Refining Company employees, or whether they involved the other trucks owned by the Idaho Gas & Oil Company and the Covey Gas & Oil Company?

A. It was my understanding that the losses were on the tankers, the units hauling to the various—from the refinery to the various service stations.

Q. Did you ever make any examination of what the losses had [1051] been and what were the circumstances surrounding any of them after the policy was issued? A. We did.

Q. But not before the policy was issued?

A. No, sir.

Q. As a matter of fact, all that you knew about the records of the old drivers of the company was secured from the officials of the Idaho Refining Company, was it not?

A. That is all that I knew of it. Mr. Salisbury, as I explained, had some further information.

Q. In so far as you were concerned, that is all that you knew, and you took that at face value? Is that correct? A. Yes, sir.

Q. You stated that it was represented to you that the company was planning to put in a safety program and give bonuses and that sort of thing, do you know whether any steps were taken along those lines?

A. I understand that there were.

Q. Do you know whether they were taken—do you know? A. No, sir; I don't.

(Testimony of Walter W. Watkins.)

Q. You never made any investigation to see whether they were or not? A. No, sir.

Q. That was just on the representation from the company? A. That is right. [1052]

Q. Did you know anything about the company's policy with relation to the hiring of new drivers?

A. No, I didn't know anything about it.

Q. You didn't know whether they were going to be given tests — what sort of qualifications they would have to have?

A. Mr. Moyle explained to me that he was going to use more care in selecting new drivers, and that they were going to install this safety campaign. That was the reason for our entertaining the insurance.

Q. Although he said he was going to use more cars, you didn't know anything about the care with which the old drivers had been selected?

A. No. [1053]

H. McKAY ALLEN

was thereupon called as a witness by and on behalf of the Respondent, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: H. McKay Allen.

Trial Examiner Riemer: And where do you live, Mr. Allen?

(Testimony of H. McKay Allen.)

The Witness: In Pocatello.

Trial Examiner Riemer: Thank you.

Direct Examination

Q. (Mr. Merrill) What is your occupation or business, Mr. Allen? [1056]

A. Insurance adjuster.

Q. Connected with what company?

A. The Fire Insurance Companies Adjustment Bureau.

Q. Where is that business located?

A. The office that I am connected with is located in Pocatello, they are a national corporation.

Q. The Pocatello office is a branch of the national corporation? A. Right.

Q. What is the business of the company with which you are connected?

A. Investigating losses and settlement of claims for insurance companies.

Q. What position do you have in the Pocatello office? A. Local branch manager.

Q. And under you, are there adjusters?

A. Yes.

Q. What business do you have in the adjustment of losses,—let me withdraw that question. I understood you to say that you adjust losses that occur when property is insured?

A. Yes, sir.

Q. Do you confine all of your adjustments to one company, or do you adjust for various companies?

A. We adjust for numerous companies.

Q. And in the business of adjustment, has your

(Testimony of H. McKay Allen.)

company adjusted losses on trucks owned by the Idaho Refining Company? [1057]

A. Yes, sir.

Q. Do you know under what policies the adjustments have been made by your company?

A. I believe that there were several policies.

Q. Are you acquainted with Policy FM-227, issued by the Firemen's Insurance Company of Newark, New Jersey, and the Metropolitan Casualty Company of New York?

A. To the best of my recollection, I have seen that on the policy information pertaining to the claims of the Idaho Refining Company.

Q. Are you able to tell us what your records show with respect to losses under Policy FM-227?

A. I have here the cases that we have developed and built in our office surrounding the investigation and settlement of claims arising out of two policies, I believe the policies mentioned by you.

Q. Now, will you refer to the ones arising out of Policy FM-227, and advise what your records show with respect to losses, and if possible, give the date of the loss, the name of the driver, the amount of the loss, and the reason for the loss?

A. Unfortunately, I didn't segregate these claims as between the two policies, but I can go through them—there is no necessity of putting them in chronological order,—if I can go through and get all of the losses pertaining to Policy FM-227, is that sufficient? [1058]

Trial Examiner Riemer: Yes.

(Testimony of H. McKay Allen.)

Q. I assume it would be.

A. The first claim that I have is one in which the accident occurred on August 31, 1941, under Policy No. FM-227; Wayne Conrad was the driver, and a brief idea of the nature of the accident was that while Mr. Conrad was passing a car which was coming towards him in the opposite direction on a narrow road, he scraped the left rear fender of this car, doing \$7 worth of damage.

Trial Examiner Riemer: I think that it would be sufficient if you stated on the basis of your investigation it was your determination that the driver was negligent and responsible for the loss. Can you do it that way?

A. Our investigation is based on a matter of legal liability. I believe that I can cut down the comments.

Trial Examiner Riemer: Is that satisfactory, Mr. Merrill?

Mr. Merrill: Yes, it is.

A. On November 5th, 1941, Mr. Robert W. Patterson was driving an Idaho Refining Company truck, insured under Policy FM-227. The gentleman went to sleep and left the road. The insurance company paid \$625. That was apparently—I think the facts speak for themselves in that case.

Q. Your record shows that it was negligence on the part of the driver, does it not?

A. Yes, so far as our investigation is concerned, it was. [1059]

(Testimony of H. McKay Allen.)

On October 22, 1941, Mr. Charles Crawshaw backed into two parked vehicles to do damage that was settled in the amount of \$26.45. It was a case of error in judgment on the part of the driver, or he did not look behind him in backing up.

On October 4, 1941, Mr. Mervin Zollman, driving an Idaho Refining Company truck insured under Policy FM-227, struck a horse between Boise and Mountain Home. As to whether or not that was negligence on the part of the driver, it is a hard thing to say.

Trial Examiner Riemer: It might have been negligence on the part of the horse?

It occurred at night and resulted in a collision loss to the insurance company of \$90.35. Little investigation was made into the negligence in that case.

On October 16, 1941, Mr. Douglas was operating an Idaho Refining Unit on the streets of Weiser, Idaho, and from a brief investigation of the file which I have not seen today, it appears that he made a sharp turn at an intersection in Weiser, Idaho, stating that there was another car coming towards him which caused him to make the sharp turn with the end result, at any rate, he turned the tractor and tanker over, spilling the contents, striking a car that was parked on the street. There was a property damage claim settled in that case, apparently for the damage to the parked car in the amount of \$90.40. [1060]

(Testimony of H. McKay Allen.)

Q. Was there also another claim there in that loss?

A. Yes, I have just come to that, Mr. Merrill.

Q. Yes, Mr. Allen.

A. The other file pertains to the same loss, the same date, but was a collision damage done to the Idaho Refining Company's unit which resulted in an insurance loss of \$1,726.38.

Q. That is exclusive of cargo, is it not?

A. Yes, this pertains to the collision coverage, only. The total loss, as per the estimate shown on the repairs and so forth is \$1,926.00. In other words, there was a deductible both on the tractor and on the trailer.

Q. There was a \$200 loss in that case absorbed by the Refining Company? A. Right.

Q. Was the City paid anything for damages for the gasoline flooding the streets and causing the necessity of patrolling the street?

A. I have been unfamiliar with these files because a Boise adjuster handled them, and they just arrived today. I do feel that that is the case. Here is a bill in the file to the City of Weiser, the fire department, service of watchmen, sand, showing a total payment to the city of Weiser in the amount of \$90.40 which was the figure that I reported to you a while ago as the entire claim. Apparently I am in error on that.

Q. Yes. [1061]

A. The amount of the loss to the damaged

(Testimony of H. McKay Allen.)

parked car was \$52.55, as per repair bill I have here.

Q. That is an additional amount?

A. That is an additional amount in that same case. That completes the files that I have here on accidents involving Policy No. FM-227.

Q. Now, Mr. Allen, did you have anything to do with the—did your company have anything to do with the adjustment of the loss of Henry Henricksen,—just a moment,—of George White near Twin Falls?

A. Yes.

Q. That is under Policy FM-227, is it not, October 24, 1941?

A. No,—I beg leave to correct my other remark there. That loss, according to our records, was handled by the Nichols Adjustment Bureau, which is a separate adjusting firm.

Q. I see. Did you have anything to do with the adjustment of the loss of Victor Ellingford on September 6th, 1941, amounting to a loss of \$112.50?

A. Yes, our Twin Falls office handled that, and unfortunately, I requested that they forward the files, but the files were not sent over due to an error in that office.

Q. Did your company have anything to do with the adjustment of the loss of Myron Whitesides which occurred September 12, 1941? Near Layton, Utah, and in which two claims were paid, one for \$50 and one for \$1,044.10? [1062]

A. Our record indicates that that was referred to the Nichols Adjustment Bureau.

(Testimony of H. McKay Allen.)

Q. I see. And did your company have anything to do with the adjustment of the loss of Boyd Cornia where the accident occurred on May 15, 1941?

Mr. Penfield: Counsel, I understood that you were limiting this to Policy FM-227?

Mr. Merrill: That is correct, for the present.

Q. Now, then, as I understand it, Mr. Allen, your testimony only has to do with the losses actually adjusted through your office? A. Yes.

Q. And that you are acquainted with additional losses which were adjusted by other adjustment companies? A. Yes.

Q. Mr. Turner testified to a number of losses which you have not testified to. He would get the information, would he not, as an agent of the company from the other companies who might adjust the losses? A. Yes, sir.

Q. And he would have the information that you had and also the information these other companies had? A. Yes, sir.

Q. That then accounts for the fact that your report is not as complete as Mr. Turner's? [1063]

A. That is correct.

Q. And your testimony is devoted merely to those adjustments that were made by the Fire Insurance Companies' adjustment Bureau here in Idaho? A. Correct.

Mr. Merrill: I think that that is all,—pardon me a moment. We did not go into Policy FM-199.

Mr. Penfield: I was wondering about that.

Q. (Mr. Merrill) Mr. Allen, would you advise

(Testimony of H. McKay Allen.)

us what record you have of accidents occurring under Policy FM-199?

A. On December 11, 1940, Mr. H. H. Hendricks was operating an Idaho Refining Company unit insured under policy FM-199,

Q. Is that Hendricks, or Hendricksen?

A. I may have that wrong—It is Mr. Henry H. Hendricksen, I beg your pardon.

Q. Yes. What was the loss?

A. The collision portion of that loss, in other words, the amount paid the Idaho Refining Company for damage to their own equipment was \$298.53.

Q. Then they would also have suffered an additional loss, the deductible?

A. \$100 deductible in that instance.

Trial Examiner Riemer: What was that figure again, please? \$299.38?

Mr. Penfield: \$298.53. [1064]

A. In connection with that same claim under coverage extended by the public liability feature of the same policy, a death and injury claim was settled for a total of \$2,000 on that same case. So far as the legal liability on the part of the company, which is the thing that the adjuster is mainly interested in, it was felt that we should settle that claim.

The physical facts were that the truck travelled 135 feet in all following the first application of the brakes. There was testimony by the driver and by the state police to the effect that he was travelling

(Testimony of H. McKay Allen.)

15 or 20 miles an hour, but the physical evidence made it seem that it was a case where the driver would be found negligent in court, and settlement was accordingly made.

The next loss under policy FM-199, Mr. Hollis Walker, was the driver, and the accident occurred on August 15, 1941. He backed into a parked truck at a service station, resulting in damage of \$25.10. I would say that the driver was negligent.

Trial Examiner Riemer: Would you read that answer, please, Mr. Reporter?

(Thereupon the last answer of the witness was read aloud by the reporter as hereinabove recorded.)

A. The next loss under that same policy, Mr. Fred Pearson, at Challis, on June 10, 1941, rolled a truck over after driving along with a heavy load on a narrow road, resulting in damages [1065] of \$1250 loss to the insurance company.

Q. Would that also mean an additional loss of cargo? A. Yes.

Q. Which the insurance did not cover?

A. That is correct.

Q. And then there was the deductible there of \$200?

A. In that case, the deductible was \$100.

In addition to the equipment insured as a truck, there was some equipment in that loss that was not a part of the truck, such as tanks, and other things that were a total loss to the Idaho Refining

(Testimony of H. McKay Allen.)

Company. That completes the files that I have on that.

Q. You don't have then the loss that occurred when Myron Whitesides was driver on the Weber County Line in the State of Utah?

A. To the best of my information, that loss was handled by the Nichols Adjustment Bureau of Salt Lake.

Q. Do you have any record of its amount?

A. The information furnished me by the company shows the amount paid on that loss was \$1,044.10.

Trial Examiner Riemer: \$1,044.10?

The Witness: Yes, sir.

Mr. Penfield: Counsel, I believe that is under Policy FM-227, isn't it?

The Witness: That is right. [1066]

Q. Yes. Now, you find that you have been furnished with that additional loss, by the company. That was the loss near Layton, Utah, I understand, that occurred September 12, 1941 of Myron Whitesides?

A. Yes.

Q. And do you have information on the loss under Policy FM-199 of Boyd Cornia of \$2500 at Pocatello?

A. Yes, I have a record furnished me by the company of that loss showing an amount paid of \$2500 from our records. I do not have the file on that. The apparent conclusion in the summary of the company is that it was the fault of the driver.

[1067]

GILBERT SHEETS

was thereupon called as a witness by and on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your full name, please?

The Witness: Gilbert Sheets.

Trial Examiner Riemer: And where do you reside, Mr. Sheets?

The Witness: Salt Lake City, Utah.

Trial Examiner Riemer: Thank you. [1078]

Direct Examination

Q. (Mr. Merrill) Mr. Sheets, during the year 1941, were you president of the Idaho Refining Company, the respondent herein?

A. Yes, sir.

Q. And as such officer, I assume of course, that you did considerable of the business of the corporation?

A. Yes, sir.

Q. I believe you are also a member of, or an officer of, the Sheets Insurance Company?

A. No, the E. L. Sheets Company.

Q. Doing business in Salt Lake City?

A. Yes, sir.

Q. Are you acquainted with R. F. Turner at Pocatello, Idaho?

A. Yes, sir.

Q. Do you know Decker Little of Salt Lake City, Utah?

A. Yes, sir.

Q. How long have you been acquainted with these gentlemen?

(Testimony of Gilbert Sheets.)

A. I have been acquainted with Mr. Turner possibly six years; with Mr. Little, possibly 35 years.

[1079]

Q. What was the policy, if you know, that covered the company's property—the trucks, I mean, their driving equipment, during the latter part of 1941?

A. FM-227, or 229,—which was it?

Q. 227. A. 227.

Q. And when was that policy written?

A. August, about the 27th, as I recall.

Q. Of what year? A. 1941.

Q. Now, was that preceded by another policy in the same company?

A. Yes, sir; FM-199.

Q. 199. Did you have any conference with Mr. Little or with anyone else, touching the rewriting of the policy under the number of FM-227?

A. In June or July of 1941, Mr. Chadwick, the vice-president of the Loyalty Group, came to Salt Lake City to discuss with Mr. Little this policy, with several others. At that conference, Decker asked me to come down and talk with Mr. Chadwick and Mr. Chadwick said that he was going to get off the line.

Q. When you say "Decker", you mean Decker Little?

A. Decker Little.

Q. Why did Decker Little ask you to come and discuss this particular policy?

A. Because he was a representative of the company, and a friend [1081] of mine.

Q. Had there been any comment touching cancellation prior to that time?

(Testimony of Gilbert Sheets.)

A. Yes. Mr. Little discussed it with me several times prior to that time.

Q. What was the result of your conference with the officers of the insurance company in July, 1941?

A. After discussing it with us, I told Mr. Chadwick that the reason I felt our losses were so high at that time was due to the inexperience of our drivers in handling big equipment, and that after they had gotten used to the equipment, they would be handled better, without any loss, and I convinced Mr. Chadwick to that effect, and he thought that was also correct, so he went back and said he would have to take it up with Mr. Sullivan, the executive vice-president of the West Coast branch of the Loyalty Group, and he then gave permission to write the policy.

After that policy was written, it apparently wasn't the inexperience of the drivers, but the carelessness of the drivers.

Q. That is Policy FM-227?

A. FM-227,—because their experience, instead of getting better, got continually worse.

Q. Now, during the period of time that policy 227 was in effect, were there any additional or other criticisms made [1082] of the losses by Mr. Little to you?

A. Yes, sir. Every time we had a loss, he would take it up with me, and ask me why, and what we could do about it. And also informed me that he was very positive the policy would be cancelled if they had very many more. In fact, on

(Testimony of Gilbert Sheets.)

each one, he said, "This is the last one, I am afraid."

Q. When the matter was taken up with you in that way, what did you do?

A. I would notify Mr. Gilbert Moyle, who was general manager.

Q. Here in Pocatello?

A. Yes, sir; I would either come up or telephone him, or write him. I have done so at various times.

Q. Do you recall when the matter of the cancellation of policy FM-227,—when it became apparent that it was going to be cancelled?

A. Well, I knew when Mr. Little came up that that was his primary reason for coming to Pocatello, and I think that he got up here on the 2nd or 3rd of the month, but he came in my office on the 8th—

Q. Of what month?

A. Was it in November that the policy was cancelled?

Q. Yes.

A. The 8th of November was Saturday.

Q. 1941?

A. 1941, and he showed me the letter that he sent to Mr. Sullivan, [1083] and he said, "I am sorry that I had to cancel the policy, but there is nothing else that I can do. I have orders from Sullivan, and I am on a hot seat, and I can't stay on any longer."

Q. What did you say, if anything?

(Testimony of Gilbert Sheets.)

A. I said, "We are going to have a bad time renewing this one, getting anybody to carry this one."

Q. And what did he say?

A. He said, "In that case, I will give you some extra time in which to renew the policy, rather than the ordinary five days."

Q. Now, that was, you say, on Saturday, the eighth?

A. Yes, sir.

Q. Now, then, what did you do, Mr. Sheets?

A. I contacted Mr. Moyle, and I can't remember—it was late Saturday I did it, and I can't remember if I contacted Mr. Moyle on that Saturday—

Q. Which Mr. Moyle?

A. Mr. Gilbert Moyle. Henry Moyle was on the Coast, and I am pretty sure that I contacted Mr. Moyle by telephone on that Saturday; if not, it was the following day.

Q. Then did you later have a conference with Henry D. Moyle, the vice-president of the company and general counsel?

A. Mr. Moyle was out of town until Tuesday.

Q. That is Henry D. Moyle?

A. Yes, Henry D. Moyle, and as soon as he got in town, he [1084] contacted me, and I went down and had a conference with Mr. Moyle for about three hours and at that time, we discussed the policy, and discussed the drivers, and we decided at that meeting that the only thing to do to get rid of our loss ratio and get a policy that we could possibly keep in force for a while, was to discharge all

(Testimony of Gilbert Sheets.)

of the drivers, because it wasn't just one or two of the drivers, but the whole bunch, with one or two exceptions, that were careless.

So we thought that rather than have one or two that were good, they would have to take the penalty for the whole bunch, because like a bunch of apples in a cart, when one goes bad, the whole bunch goes bad, so Mr. Moyle and I discussed this, and he left the next day, to inform Gilbert Moyle of our decision.

Q. What date, if you recall, was the day this decision was reached to discharge all of the drivers?

A. November 12th, the day he arrived from California. He left on the 13th for Idaho for a conference with his brother.

Q. And where did this conference on November 12, 1941 take place?

A. In Mr. Moyle's office.

Q. In the office of Henry D. Moyle?

A. Yes, sir.

Q. In Salt Lake City? A. Yes, sir.

Q. What was the purpose—strike that, Mr. Reporter. [1085] What particular reason did you have for determining to, or deciding to discharge all of the truck drivers?

A. Well, there were so many of them, and you couldn't pick one or two out of the bunch, because it wasn't one or two but a majority of them, so far as I could see.

Q. What effect would the discharge of all have on the insurance matter as you viewed it?

(Testimony of Gilbert Sheets.)

A. It would show the insurance company that we were serious in trying to get a decent loss ratio and wanted to cooperate with them as much as we could, because every time we have a loss, it penalizes us as well as the insurance company.

Q. Now, in your discussion with Mr. Henry D. Moyle, and in the discharging of these drivers, state whether or not the subject of labor unions plays any part, whatever?

A. Never even heard of a labor union at that time.

Q. You mean as connected with the company?

A. As connected with the company. The only union that we ever heard of or had any contact with was the local union they had up there, and with which we had a fair contract.

Q. That is what is called the Association?

A. That is the Association.

Q. You signed one or two—two, I believe, labor contracts with that Association?

A. I think that I signed the original, and Mr. Gilbert Moyle signed an extension. [1086]

Q. Then at the time that these drivers were discharged, did you know that—whether or not they belonged to any labor organization?

A. I did not.

Q. Or whether they belonged to Local Teamsters Union 440? A. No, sir.

Q. Had that matter ever been discussed with you?

(Testimony of Gilbert Sheets.)

A. That matter had never been discussed with me.

Q. Had you been told by anyone that there was such a union? A. No, sir.

Q. Or that any member of the employees of the Idaho Refining Company had any membership in it?

A. No, sir; I didn't see how they could, with their other representative,——

Q. Yes, but what I want to know, is: did you, as vice-president of the company——

A. I am the president.

Q. Yes, as president of the company, have any information of any kind or character touching membership of any of the truck drivers in any union?

A. No, sir.

Q. I mean any labor organization, and particularly 440?

A. No, I never heard anything about any labor union up here in connection with our company.

Q. Did labor unionism have any part of any kind or character in [1087] your determination to discharge the employees,—I mean to discharge the drivers? A. No, sir.

It was never even discussed, or never even thought of.

Mr. Merrill: That is all. You may cross examine.

Cross Examination

Q. (Mr. Penfield) Mr. Sheets, what was the

(Testimony of Gilbert Sheets.)

date that you testified you had this meeting at which you decided to discharge the entire crew?

A. The 12th.

Q. That took place in Salt Lake City, did it?

A. Yes, sir.

Q. You stated that you concluded that it was necessary to discharge all of the drivers. Did you know anything about the accident records of the individual drivers? A. Yes, sir.

Q. Didn't you know that many of them had never been involved in any accident?

A. Yes, sir.

Q. How many of them?

A. Well, the accidents were so frequent that I never kept exact track of the different men's names, but every time it would be a different man. When you get a record like that, with such a few drivers as we have, and as many accidents as we have, you are just positive the whole organization, that all of [1088] the drivers are careless, and all have the same attitude.

Q. Do you know whether James Ayers was ever involved in an accident? A. I don't know.

Q. Do you know whether S. Burkholder had ever been involved in an accident?

A. I couldn't tell you any one person's name that was in any accident, but I know that we had so many accidents,—13 in 2½ months, and out of the number of our drivers, you can figure that percentage.

(Testimony of Gilbert Sheets.)

Q. You knew a number of these accidents didn't involve drivers driving oil trucks?

A. Yes, sir.

Q. You didn't discharge those drivers, did you?

A. We discharged all of the truck drivers, because that is where all of the trouble was, all of our big accidents were on the big trucks.

Q. You heard some of these insurance men here testify yesterday, did you not, that a number of smaller accidents is a material factor?

A. It is also a material factor.

Q. And you knew that some of these accidents involved people who weren't drivers of transport trucks, but who were working for the Idaho Gas & Oil Company—

A. You will always have that. [1089]

Trial Examiner Riemer: Just let counsel finish his question.

Q. —and the Covey Gas & Oil Company, do you not?

A. Yes, sir.

Q. Yet you didn't conclude that it was necessary to discharge those drivers?

A. They weren't the main offenders.

Q. But they had been involved in accidents in which there had been claims?

A. Slightly, in comparison to the others.

Trial Examiner Riemer: How did you know that, Mr. Sheets? The insurance representative said that they had never broken it down.

The Witness: I never broke it down, but you can tell. We knew that they were the big trucks.

(Testimony of Gilbert Sheets.)

You can't have a \$2500 loss on,—a collision loss on a \$1200 unit.

Q. How many losses were there that involved trucks other than the Idaho Refining Company trucks that were the big transport trucks?

A. What was your question?

Q. How many of the claims were there?

A. There were 13 yesterday reported. I don't know just how they were broken down. They reported 13 claims in two months as Mr. Turner had the records. Wasn't that correct, or was it eleven?

Q. Thirteen.

You don't know how many of them involved drivers of other [1090] vehicles than transports, do you?

A. No, sir.

Q. And you didn't know at the time?

A. I didn't know exactly, no.

Q. As a matter of fact, you never made any attempt to determine which drivers were involved in accidents, and which ones were not?

A. You mean which company?

Q. Which driver for any of the companies?

A. I know the transports—I knew when a transport had an accident, and I knew that involved one of the truckdrivers.

Q. Do you know how many accidents there were involving truck drivers of transports?

A. No, but it seems to me that they were practically all transport drivers, the main part of them. They were the ones that particularly came to my attention.

(Testimony of Gilbert Sheets.)

Q. Then did you make your decision on the basis that you assumed that most of these drivers were the transport drivers?

A. The ones that were having the bad accidents, yes.

Q. That was just because you assumed it was these transport drivers, is that it?

A. I assumed by actual records.

I knew that certain ones had come up.

Q. Did you make any effort to determine, in any one of these individual accidents, who was at fault?

[1091]

A. I read some of the reports. Mr. Little would come and advise me exactly what happened.

Q. As a matter of fact, you heard Mr. Little testify that the thing he was concerned with was the loss ratio, and he made no effort to ascertain what was the cause?

A. The loss ratio is the big factor, but another big factor is the fact that when you have a lot of little losses, you know, a lot of little accidents are bad, because you know that you are likely to get a big bump. Your big ones are the ones that take the premium up. Remember, I am an agent.

Q. How many big accidents did the company have among the 13, do you know?

Mr. Merrill: You mean the insurance company?

Mr. Penfield: I mean the Idaho Refining Company, and the——

A. No, I don't.

Q. So you made your decision to discharge all of the drivers without knowing how many big ac-

(Testimony of Gilbert Sheets.)

cidents there were, and how many small accidents, and who was involved in them, is that correct?

A. That isn't quite right.

Q. What is the fact, then?

A. We certainly had some idea of what we were doing.

Q. What idea?

A. We knew by our loss ratio; we didn't break everything up.

Q. You didn't make any effort to find out which drivers were [1092] responsible, which ones were at fault, how many accidents involved trucks of the Idaho Refining Company, or trucks of the Idaho Gas & Oil Company or the Covey Gas & Oil Company?

A. We didn't break them down that way, but we know the transports, and we know the main part of our big driving, out of town driving, was all done by the Refinery, and I also had Mr. Little's report regarding the various speeds of these two drivers, which also was a determining factor.

Q. You didn't have any other checks than those of Mr. Little, did you, in regard to the speeds of drivers?

A. Well, Mr. Little had brought down several reports, and he told me that there was something regarding the policy's objecting to them going at excessive speeds, told me that they ought to cut down their speed, some way. I don't just remember what that was, exactly.

(Testimony of Gilbert Sheets.)

Q. Isn't it a fact that the company had governors on their trucks?

A. I don't know; I doubt it.

If they did have, they didn't work in that particular,—in those two particular cases, apparently.

Q. Isn't it a fact with respect to—I will withdraw the question.

As a matter of fact, under policy 227, there only had been three accidents involving substantial losses, did you know that?

A. I never broke them down. I just got the information from [1093] Mr. Little that there was a truck involved at a certain place, and the size of the truck, and those trucks were all—the ones that I remember were big transport trucks.

Q. And in so far as those accidents were concerned, the drivers concerned had been discharged because of the accidents, is that not correct?

A. Of that, I am not sure.

Q. How frequently did you come to Pocatello in connection with your position as president of the company in 1941?

A. I couldn't tell you how often; approximately once a month.

Q. Approximately once a month. You didn't have much to do with the actual affairs and operations of the plant, did you? A. No.

Q. You didn't actually see the employees and have very much to do with the employees?

A. No.

Q. Your chief contact with the company would

(Testimony of Gilbert Sheets.)

be at the meetings of the Board of Directors at Salt Lake City, would it not?

A. That is true.

Q. So you were not in a position to know very much about any union activities going on around the plant, were you?

A. I got a report every day from the plant.

Q. Did that report include union activities?

A. No, there wasn't any there that I ever heard of. [1094]

Q. I see. Now, from reports that you received, what is the fact as to whether or not the majority or a large percentage of these accidents occurred to the drivers of the transports, or with the small cars around the plant and other stations?

A. It seemed that all were on the large transports, the ones that I remembered.

Q. Yes. After you had learned of the intended cancellation of the insurance on the transport equipment—on the truck equipment—was there anything that you could do to secure additional or other insurance without the discharging of these drivers?

Mr. Penfield: May I hear that question, Mr. Reporter?

(Thereupon the question referred to was read aloud by the reporter as hereinabove recorded.)

Mr. Penfield: Oh, I object to it, Mr. Examiner.

Trial Examiner Riemer: The objection is sustained. [1097]

Q. What other alternative, if any, did you have, viewing the picture as it was before you, after the

(Testimony of Gilbert Sheets.)

cancellation of this insurance to secure other insurance, other than which you did?

Mr. Penfield: I object to that upon the same ground.

Trial Examiner Riemer: Sustained. [1098]

Redirect Examination

By Mr. Merrill:

Q. As a matter of fact, in this particular instance, you had had,—I will withdraw the question. You had spent a considerable portion of your life in the insurance business had you not, Mr. Sheets? A. About 20 years.

Q. And as such, had become thoroughly acquainted with the attitude of insurance companies touching such losses? A. Yes, sir.

Q. So that when you met with Mr. Henry D. Moyle on this particular problem, you were also possessed of information touching insurance?

A. Yes, sir.

Q. And the attitude of insurance companies with problems like this presented? A. Yes, sir.

Q. And did that have also an effect on the determination of this discharge of the drivers?

A. A very definite effect. [1100]

CAPTAIN ARCH G. WEBB

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows: [1102]

Trial Examiner Riemer: Will you state your full name, please, Captain?

The Witness: Arch G. Webb.

Trial Examiner Riemer: Where are you stationed?

The Witness: Captain in the United States Army Reserve, Camp Hahn, California.

Direct Examination

By Mr. Merrill:

Q. Captain, have you previously lived in Pocatello? A. Yes, I have.

Q. And have you been heretofore connected with the Idaho Refining Company? A. I have.

Q. During what period of time?

A. From July of 1938 until December of 1940.

Q. July of 1928?

Trial Examiner Riemer: 1938?

The Witness: 1938.

Q. And in December, 1940, what occurred—did you——

A. I was then called on active duty or into active duty in the United States Army.

Q. Now, during the period of time from July, 1938 until December of 1940, what position, if any, did you hold in the Idaho Refining Company organization.

(Testimony of Captain Arch G. Webb.)

A. I was—most of that time I acted as secretary of the [1103] company. I was not made secretary until perhaps August.

Q. Of what year? A. 1938.

Q. Yes. Now, were you in the employ of the company at the time of the organization of the Idaho Refining Company Employees Benefit & Labor Association?

A. I don't know. I rather think not. The company had been in operation for approximately one month before I arrived, and it is my recollection that the organization was in existence before I affiliated with the company.

Q. (Mr. Merrill, continuing): No, when you became employed by the [1104] Idaho Refining Company, which was in August, 1938,—

A. July, 1938, I believe,—yes, July.

Q. —did you meet a man by the name of George Hibbler? A. Yes, I did.

Q. What was his position, if any, with the company then?

A. He was a chemist for the company.

Q. Did he have any supervisory powers of any kind?

A. No, none whatever, I would say.

Q. No one was working under him?

A. He had no one under him.

Q. And just doing the chemical work that was necessary in testing the gasolines, oils and so forth of the company? A. That was all.

(Testimony of Captain Arch G. Webb.)

Q. Did you become acquainted with a man by the name of George Mann, when you were employed with the company? A. Yes, sir.

Q. What were his duties, if you know?

A. He worked on the still. He was a helper on the stills, as I recall it.

Q. Did he have any supervisory duties to perform? A. None whatever.

Q. During your connection with the company, were there discounts given to anyone for gasoline purchased, gasoline and oil purchased at the Covey Gas & Oil Company of Idaho?

A. Yes, there were. [1105]

Q. And to whom were those discounts given?

A. To all employees making purchases.

Q. Was there any distinction made between employees who were members of the Association and employees who were not, so far as these purchases were concerned?

A. None whatever.

Q. In other words, anyone who was an employee of the Idaho Refining Company would be entitled to the discount for gasoline purchased at the Covey Station irrespective of his membership in the Association? A. That is right. [1106]

Q. What is the fact, then, as to whether or not these deductions were made whenever the employee, and for whatever purpose he requested it? Was or was not that so?

(Testimony of Captain Arch G. Webb.)

A. The fact is, they were deducted when the employee requested it.

Q. Irrespective of the purpose?

A. That is right. [1107]

Q. Did you have any contact with August Rosqvist in the year 1939 or thereabouts?

A. Yes, sir; I did.

Q. What was that contact?

A. I met with August Rosqvist in his office at the Labor Union Temple with Mr. Brandt in connection with having the Idaho Refining Company removed from the Unfair List.

O. At whose request did you attend that meeting?

A. As to that, I can't really say. Mr. Rosqvist had been—had approached us numerous times at the refinery.

Q. Mr. Rosqvist or Mr. Brandt?

A. Mr. Brandt,—I beg your pardon, and incidentally, I think that Mr. Rosqvist had also approached us, and I had been unable——

Trial Examiner Riemer: About what, please?

The Witness: About endeavoring to unionize the plant, so he had been to see me at the office, several times, and due to the nature of my work, I was travelling quite a little and was not in, so consequently I called in at his office knowing that he had called out to the office several times to see me, and so I called in at his office one day and talked to him in connection with unionizing, or

(Testimony of Captain Arch G. Webb.)

ascertaining his desires in regard to unionizing the plant.

Q. And what was the result, if any, of that meeting?

A. The result was that I invited him out to the refinery at his convenience to discuss with the employees of the refinery [1108] the matter regarding unionizing the employees.

Q. Now, did Mr. Rosqvist and Mr. Brandt later come out for a meeting with the employees of the refining company? A. Yes, they did.

Q. Do you remember who called the meeting, or how it was arranged?

A. To the best of my recollection, notice was published calling this meeting of our employees of the refinery.

Q. And did you attend the meeting?

A. Yes, I did.

Q. Where was it held?

A. It was held in the bookkeeping office of the refinery.

Q. Do you recall who called the meeting to order? A. No, I do not.

Q. What, if anything, did you do or say at the meeting?

A. I introduced Mr. Rosqvist and Mr. Brandt, stating that they were representatives of the American Federation of Labor and were interested in trying to unionize the members of our plant, and that they were there at that meeting to present their story.

(Testimony of Captain Arch G. Webb.)

Q. What comment, if any, did you make relative to the right of the employees to act as they wished?

A. Well, I made no comment other than the fact that it was a matter which the employees themselves would have to decide.

Q. Did you make any comment there in substance or effect that the unions could do nothing that the company's own Association [1109] could not do?

A. Would you repeat that question, please?

Mr. Penfield: Would you read it to him, Mr. Reporter?

(Question read aloud by the reporter as hereinabove recorded.)

A. I did not.

Q. After you had introduced Mr. Rosqvist and Mr. Brandt, then what occurred?

A. Mr. Brandt made a few brief remarks, and then he was followed by quite a discussion by Mr. Rosqvist, or quite a speech by Mr. Rosqvist.

Q. Then what happened?

A. I thanked the gentlemen for coming out on behalf of the employees, and Mr. Rosqvist and Mr. Brandt left the meeting.

Q. When did you leave, if at all?

A. I left the meeting at the same time they did.

Q. And where did you go after you left the meeting?

A. Well, I retired to my office. I stayed in the lobby for a few minutes and visited with Mr. Brandt and Mr. Rosqvist.

(Testimony of Captain Arch G. Webb.)

Q. After they had left the meeting?

A. After they had left the meeting, that is, I stayed in the lobby of the office, I shook hands with them and again thanked them for coming out to the meeting and said "Good night".

Q. Do you know whether or not there was a vote—did you at any time go back into the meeting? [1110]

A. No, I did not.

Q. Do you know whether or not there was any vote taken at that meeting?

A. Yes, I do know that there was a vote taken.

Q. Where did you get that information, and when?

A. Immediately following the meeting by the employees who attended.

Q. Were you present when that vote was taken?

A. I was not.

Q. Were you present when a man by the name of A. L. Heckert was employed, February 27, 1940?

A. You mean was I at the refinery when he was employed?

Q. Yes. A. Yes, I was there.

Trial Examiner Riemer: What was that date, please, Mr. Merrill?

Mr. Merrill: February 27th, 1940.

Q. Do you recall his coming into the office at or about the time of his employment?

A. As to that, I can't say for sure, because I am not certain that I have the man *properly* identified, but if I do, I was there at the refinery when he came, if he is the man I think that he is.

(Testimony of Captain Arch G. Webb.)

Q. Did you hear any discussion by Mr. Moyle or any other officer of the company with reference to any union activities or [1111] membership, with him? A. No, I did not.

Q. Did you hear at that time, or at any other time, Kermit Rice make any inquiry as to whether or not Heckert or any other employee belonged to any labor union? A. No, I did not.

Q. Have you yourself ever inquired of any prospective employee or any employee of the Idaho Refining Company as to whether or not he belonged to any labor union?

A. No, sir; I haven't.

Q. Have you ever made any inquiry of any kind or character of an employee, either then engaged or a prospective employee, as to whether or not he had any labor union affiliations?

A. No, sir; I haven't.

Q. Have you ever made any comment to any such person touching labor affiliations or labor unions? A. No, sir; I haven't.

Q. Has that subject ever been discussed by you, or in your presence, with any employee or prospective employee of the Idaho Refining Company?

A. No, it hasn't.

Q. Did you know a man by the name of Wayne Douglas? A. Yes, I did.

Q. Who was he?

A. Just a minute—I would like to have you re-read the question before this last one in regard

(Testimony of Captain Arch G. Webb.)

to my discussing union activities [1112] with some of the employees.

Mr. Penfield: Yes. Will you read the question, Mr. Reporter?

(Thereupon the following question was read aloud by the reporter:

“Q. Have you ever made any comment to any such person touching labor affiliations or labor unions?”)

A. I would like to correct that answer: upon another occasion, sometime prior to the meeting, I was approached——

Q. Prior to what meeting?

A. This meeting which Mr. Rosqvist spoke.

Q. Yes.

A. I was approached by a couple of truckdrivers who inquired about the union, or affiliating with an organized union. My reply to them was that that was their business, that they could do what they wanted to.

Q. I see.

Trial Examiner Riemer: Can you fix the time of that, Captain Webb?

The Witness: No, I can't, but I can give you the approximate time.

Trial Examiner Riemer: Approximately when?

The Witness: It was,—let's see,—I joined the company in 1938. I would say that it was sometime during the fall of 1938.

(Testimony of Captain Arch G. Webb.)

Q. (Mr. Merrill): Do you remember who those two truckdrivers [1113] were?

A. I remember one of them—well, I can't say that I can identify any of them.

Q. Either of them?

A. For sure. I think Jim Ayers was one of the employees.

Q. To whom you made that remark?

A. Yes, sir.

The reason I recall that is because these boys who made the inquiry were new employees who were formerly employed by Elmer Carr, and we bought Elmer Carr's equipment, and we also took with it the truck drivers.

Q. Yes. Now,—

A. So it would be his truck drivers.

Q. Do you have any further comment to make on that instance?

A. No, I havent.

Q. Now, with respect to Wayne Douglas, did you see him at one time at American Falls?

A. Yes, I did; I have seen him several times at American Falls.

Q. Do you recall a time when you saw him stop there and you had a conversation with him?

A. Yes, I do.

Q. Fix the time as nearly as you can, and relate the incident, please?

A. Wayne Douglas was driving a transport loaded with gasoline to some point west of American Falls. I had been on the road [1114] and working late, and was returning home, I would

(Testimony of Captain Arch G. Webb.)

judge it was approximately 10:00 o'clock at night. I noticed a couple of our trucks stopped beside an eating place, just before you make the last turn to enter American Falls. One of the drivers I immediately recognized as Wayne Douglas; the other one got in his truck and left, I don't recall who that was, but I proceeded immediately to remind Douglas that he was working for the company, and that he was to discharge his duties honestly and keep about his business, and told him to proceed, which he did.

Q. How long—was there any comment made at that time about the fact that he had just left the refining company with his load?

A. No, but American Falls as I recall it is approximately 25 miles from Pocatello, and he could not have been on the road longer than $\frac{3}{4}$ of an hour, that is the driving time between those two points would not have exceeded $\frac{3}{4}$ of an hour, so there was no excuse for his stopping. Incidentally, he told me that he didn't eat before he left the refinery and I told him that it was—that is, that he had no business eating on the job, that he was to eat before he took the truck and was to keep it moving and not to delay en route.

Mr. Penfield: Counsel, I don't believe that any date has been fixed on this.

Q. Fix the date as near as you can, if you have not already [1115] done so.

A. I don't know that I can fix the date. I don't remember when Douglas joined the company, but at

(Testimony of Captain Arch G. Webb.)

the time that this incident occurred, he was in the employ of the company. It would be sometime in 1940, I think, probably in the summer or spring of 1940,—the summer, I suppose, because my recollection is that the weather was warm, and as nearly as I can recall, that would be the approximate time.

Mr. Merrill: You may cross examine.

Cross Examination

Q. (Mr. Penfield): Captain Webb, were you a member of the Employees Benefit and Labor Association? A. Yes, I was.

Q. When did you join?

A. I joined shortly after I became employed by the company.

Q. Did I understand you to say that you came to work for the company in July, 1938?

A. Yes, about the middle of July.

Q. You don't recall whether the Association was in existence at that time, or whether it was not?

A. No, I have no recollection.

Q. Did you maintain your membership in the Association continuously up until the time that you left the company? A. Yes, I did. [1116]

Redirect Examination

Q. (Mr. Merrill): Captain Webb, do you recall a meeting or a [1122] gathering of the employees of the Idaho Refining Company, sometime in the fall of 1939, or the winter of 1940, when Henry D. Moyle, vice-president, discussed certain

(Testimony of Captain Arch G. Webb.)

matters from the steps of the office building with a gathering? A. Yes, sir; I do.

Q. Are you able to fix the time?

A. I can't fix the date, but I would say that it was sometime in the early—sometime during the winter of 1940, or early spring. It occurred during the forenoon—the meeting occurred during the forenoon at the refinery, or at the back of the office at the steps leading from the back office of the refinery.

Q. What, if you recall, was the occasion of the meeting? And what Mr. Moyle say?

Trial Examiner Riemer: This is Henry Moyle?

Mr. Merrill: Henry D. Moyle.

A. The cocasion for calling it, I think, was this: we had had numerous inquiries from some of the employees pertaining to obtaining homes under this cheap housing program.

Q. Under the Federal Housing Program?

A. Yes, it was sponsoring it, so Henry—or Mr. Moyle addressed,—I called all of the employees of the refinery, including the operators on the stills, and the plant may have even closed down, I don't recall, but in any event, I called all of the employees, all of the office employees and men in the yard and on the stills, and he told them that he would—in reply [1123] to these inquiries regarding homes, the employees wanted to build, he told them that the company would do everything that it could to try to enable them to build homes, that

(Testimony of Captain Arch G. Webb.)

they would endeavor to see that they were financed, and the company's support would be lent to that end.

He also discussed at that meeting, the matter pertaining to discounts of employees, and told them that they would be able to buy gas at the main Covey station at a certain figure above the actual cost, sufficient to just take care of the expense involved in handling it; in other words, there would be no profit derived by the company from the sale to the employees.

Q. Now, you say that that was a meeting of all employees? A. Yes, that is right.

Q. Was there any comment made of any kind there that day touching the Employees Association?

A. I have no recollection of it at all.

Q. Do you have any recollection of any mention being made of the membership in the Association, or of the Association in any respect?

A. No, sir; I don't.

Q. Now, I understool you to say on your cross examination that you are a member of the Association? A. That is right.

Q. And that you had never attended any meetings except one?

Mr. Penfield: No, he didn't testify to that [1124]

Q. Is that the fact?

A. No, I said that I had no recollection of ever having attended any more meetings than one, in addition to the one at which we brought out Mr. Rosqvist.

(Testimony of Captain Arch G. Webb.)

Q. Assuming that was an Association meeting, to which you brought Mr. Rosqvist,—I understood you to say that that was a meeting of all employees?

A. That is right.

Q. And not an Association meeting?

A. That is right.

Q. If that be the case, your attendance at an Association meeting would be limited to one?

A. That is right.

Q. And then you went in late and left before the meeting was over? A. Yes, sir.

Q. Did you participate in any voting?

A. No, sir.

Q. Or in any discussion? A. No.

Q. Did you ever participate in any activities of this Association? A. No.

Q. Why did you join?

A. Oh, to derive the insurance benefits that may have been [1125] offered by the Association.

Q. Are they what are known as the sick benefits? A. That is right. [1126]

Trial Examiner Riemer: Captain Webb, regardless of whether the products of the Idaho Refining Company were distributed by the Covey Gas & Oil Company of Idaho, the Reliance Oil Company for Idaho, isn't it true that those products were advertised at those stations as the products of the Idaho Refining Company?

A. No, that is not correct. The Covey Gas & Oil Company had its own trade-name and advertised its products under that trade-name. The Re-

(Testimony of Captain Arch G. Webb.)

liance Oil Company in this area advertised Idaho Refining Company products.

Trial Examiner Riemer: Captain Webb, can you tell me and give me some explanation for it, the policy of the Idaho Refining Company with respect to its truckdriver stopping along the road and getting a cup of coffee, or hot dogs?

The Witness: Well, naturally, a company trying to operate at a profit would not want a truck driver loitering on the way, so we continuously admonished the drivers not to stop, and told them that if it continued, they would be discharged.

Trial Examiner Riemer: What was the reason for that policy? [1129]

The Witness: Well, the reason being——

Trial Examiner Riemer: Loss of time, mostly?

The Witness: Loss of time, and additional expense to the company.

Trial Examiner Riemer: I can understand that policy with respect to a truckdriver stopping, let us say, at American Falls, after he leaves the plant. Supposing, however, the man leaves the plant for down south and has got a full tank, and he leaves at 10:00 p. m. and approximately 2 or 2-1/2 hours later he arrives at Malad, which is approximately 65 miles from here. Would the company's policy still be opposed to allowing that truckdriver to stop at 12:30 or 1:00 o'clock in the morning for a cup of coffee?

The Witness: No, I think not. I wouldn't dis-

(Testimony of Captain Arch G. Webb.)

courage that at all. It merely tries to discourage excessive loitering along the way. Frequently the truckdrivers were in the habit to my knowledge of stopping along the way every half hour or hour, talking with the waitresses and killing time. To try to obviate that difficulty, sometime before I left, we purchased a number of service recording machines,—I believe that is what they call them; in any event, it was an appliance to attach to the truck and this apparatus would check the time that the employee stopped and the time that he was moving.

Trial Examiner Riemer: Thank you.

Redirect Examination (continued) [1130]

Q. (Mr. Merrill): Did those clocks work?

A. Very satisfactorily.

Q. When the employee, the driver, would loiter around as you have mentioned, would you have any knowledge as to what would happen as to the speed of the truck thereafter?

A. Definitely. They would try to make up the lost time by driving faster, increasing their speed on the highway, and the story would be told by the recording machine.

Mr. Merrill: I think that is all.

Trial Examiner Riemer: Well, as I gather from your testimony then, after the installation of the service recorders, the loitering along the road stopped?

The Witness: I don't know just what the effect

(Testimony of Captain Arch G. Webb.)

was. We were in the process of installing them on all trucks at the time I left. We had had them on most of the trucks, as I recall, by the time I left, but just what the results were subsequently to that time, I can't say. [1131]

WILLARD A. SHEPPARD

was thereupon called as a witness by and on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: Willard A. Sheppard.

Trial Examiner Riemer: How do you spell your last name, Mr. Sheppard?

The Witness: S-h-e-p-p-a-r-d (spelling).

Trial Examiner Riemer: Where do you live, Mr. Sheppard?

The Witness: Boise, Idaho.

Direct Examination

Q. (Mr. Moyle): Mr. Sheppard, what is your present occupation?

A. I am district manager of the Idaho Refining Company, and manager of the Idaho Gas & Oil Company.

Q. In what locality? A. Boise, Idaho.

Q. As manager of the Idaho Gas & Oil Company, you are restricted [1133] to the Boise, area?

(Testimony of Willard A. Sheppard.)

A. No, from Twin Falls, west.

Q. I see.

A. To, I would say, the Washington line.

Q. Now, when did you undertake that employment? A. December 20, 1940.

Trial Examiner Riemer: In both capacities?

The Witness: Yes, sir.

Q. Now, during the—since that period of time, have you maintained the same line of work?

A. Yes, sir.

Q. While thus engaged, I assume,—I will withdraw the question. Mr. Sheppard, were any minutes or records rather of the Idaho Gas & Oil,—were any minutes or records rather of the Idaho Refining Company Employees Benefit & Labor Association ever turned over to you?

A. No, sir; I never heard of the Association until in the court room here yesterday.

Q. Are you a member of it? A. No, sir.

Q. Never have been a member? A. No.

Q. What is the fact, then, as to whether or not you have ever received or seen any of the minutes or records of this Association? [1134]

A. I have never seen any.

Q. Now, you know Mr. Roy Williams, do you not? A. Yes, sir.

Q. Under what circumstances do you know him?

A. He was an employee of a company that we bought out, the Intermountain Oil Company, and at the time of the purchase, we also hired Roy as

(Testimony of Willard A. Sheppard.)

an employee of the Idaho Gas & Oil Company, and he worked for me until just recently.

Q. Is he still in the employ of the Idaho Gas & Oil Company? A. No, sir.

Q. When did he terminate his employment?

A. Well, I am not sure, but sometime in May, I think.

Q. What was his attitude towards you and the company at the time of the termination of his services, if you know?

A. Well, I have—I would say that he is very embittered towards the company and me and the rest of the employees.

Q. Do you know why? A. I have no idea.

Q. Where did you get that information of his attitude?

A. Well, from former employees, from service station operators, and from present employees.

Q. Now, did you have occasion to call him on the telephone on the 13th day of November, 1941, if you remember? A. I think so.

Q. And what was the substance of that telephone conversation? [1135]

A. Mr. Moyle had called me, as he had on several occasions previously, relative to obtaining transport drivers, and there were two men in particular who had had a great deal of experience in driving, in fact, they own their own transport, and I wanted to obtain the names of these men with the idea of sending them over to Pocatello.

Q. Who were these men?

(Testimony of Willard A. Sheppard.)

A. Well, I couldn't give you their names, even now.

Q. Were they then in the employ of the company?

A. No. They were,—they had operated this unit for hire.

Q. Now, what was the subject of your conversation over the telephone, if you had one, November 13, 1941, with Roy Williams?

A. I just merely called him and asked him if he knew the names of these two fellows, or of any experienced transport drivers that we could hire.

Q. And what did he say?

A. Well, he did tell me the names of these men then, but he didn't know how I could get in touch with them, and he didn't know of anyone else.

Q. Do you know the names that he gave you?

A. No, I wouldn't.

Q. Was there anything else said in that conversation? A. No, sir.

Q. Now, did he call at the office on November 14, that would be the next morning, 1941? [1136]

A. Yes, he reported to work.

Q. When he reported to work that morning, was there any conversation with him?

A. Well, nothing that I can recall other than our usual daily business.

Q. Did you discuss the engagement of any employees for truck driving purposes on the morning of the 14th of November, 1941, with Williams?

(Testimony of Willard A. Sheppard.)

A. Well, I probably did, because I was quite anxious to hire these men for Mr. Moyle.

He had told me in the telephone conversation the previous evening, that he was going to discharge all of our drivers, all of our transport drivers, and I knew that we had to have some men in Pocatello, quick.

Q. Did you have any conversation with Mr. Williams concerning drivers on November 16th, 1941? A. No, sir.

Q. Did you go out to Mr. Williams' house at any time during that period? A. No, sir.

Q. Do you recall whether or not you asked Roy Williams relative to whether or not Ray Pittman and a man by the name of Zollman had ever joined the union? A. No, sir.

Q. Did you or did you not ask him any such questions? [1137] A. No, sir.

Mr. Penfield: I know that I have been somewhat confused, and I think that the record is, as to whether the man's name is Zollman or Zollmer. Do you think that the witness can clear that up?

Mr. Merrill: I will try to.

Q. Do you know whether it is Zollmer or Zollman? A. It is Zollman.

Q. The name was Zollman? A. Yes, sir.

Q. I will ask you definitely, did you ask Williams, LeRoy Williams, whether or not Ray Pittman belonged to a labor union? A. No, sir.

Q. Did you ask Roy Williams whether or not Zollman belonged to a labor union?

(Testimony of Willard A. Sheppard.)

A. No, sir.

Q. Did you discuss with Roy Williams, labor union activities of any employees?

A. No, sir.

Q. Did Roy Williams say anything to you about the labor union membership of these two employees, or any other employees? A. No, sir.

Q. Did you ever discuss with Williams, with Roy Williams, the subject of labor unionism?

A. No, sir. [1138]

Q. State whether or not—I will withdraw the question.

Did you ever *tall* Roy Williams that if Mr. Pittman and Mr. Zollman had joined a union that the company would have to let them go?

A. No, sir.

Q. And did you ever tell him that the company would use their accidents and particularly an accident of Zollman hitting a horse, as an excuse to let them go? A. No, sir.

Q. Now, Mr. Sheppard, let me ask you again, was there ever any occasion during this period of time, or otherwise, or at all,—I will withdraw the question.

Was there ever any occasion during the period of November, 1941 or at any other time when you made any inquiry of Roy Williams touching any employee with respect to his membership in any labor organization? A. No, sir.

Q. Was there ever any time when you asked

(Testimony of Willard A. Sheppard.)

Roy Williams to inquire of any employee whether or not he was a member of any labor union?

A. No, and I never asked any of the employees I hired. [1138A]

Q. Now, did you know a man by the name of Stanley Merrill? A. Yes, sir.

Q. Did you have any information touching a wreck that he had near Boise? A. Yes, sir. [1139]

Q. Tell us what you saw of the wreck, and the character of the highway, Mr. Sheppard, please?

A. The character of the highway itself was dry.

Q. Was it a straight road or a turn? [1140]

A. It was a curve, a very sharp, right-angle curve.

Q. And how did the wreck appear when you saw it?

A. The trailer was completely turned over and leaning up against a broken telephone pole. The truck itself was upright.

Q. Do you remember when that accident occurred? A. No, I don't.

Q. Do you know a man by the name of Wayne Douglas? A. Yes, sir.

Q. Did you know him about the 5th day of November, 1941 A. Yes, sir.

Q. No, it was,—did you know him on the 16th day of October, 1941? A. Yes, sir.

Q. Do you know what occurred at that time?

A. Well, if that is the date of this accident, I was in Hailey, Idaho, and Mr. Moyle, Mr. Gilbert

(Testimony of Willard A. Sheppard.)

Moyle telephoned me that there had been an accident in Weiser, with one of our transports, and he wanted me to get over there as quickly as I could.

Q. Did you go down to Weiser?

A. Yes, sir, I arrived there, I would say, between one and two o'clock in the morning.

Q. Did you see Douglas?

A. Yes, sir; one of the small boys had taken Mr. Douglas to the private residence of someone there, and I had him drive me out and got Wayne out of bed to inquire if he was injured. [1141]

Q. Did you discuss the accident with him?

A. Yes, sir.

Q. Did he tell you how it happened?

A. Yes, he told me.

Q. What did he say?

A. He told me that he had come across into Weiser,—which he was not supposed to do; in other words, it was off of the scheduled route, and had dinner at his sister's cafe, and that in attempting to make up for lost time he was driving too fast, and he said that he,—

Q. He told you this, did he?

A. Yes. He said he was going at least 40 miles an hour, was the way he answered me, and in attempting to make this turn, the transport turned over.

Q. Now, describe the appearance of the transport and the appearance of the wreck when you saw it?

A. Well, the transport was leaning against a

(Testimony of Willard A. Sheppard.)

tree, and the fire department was there; the police officers, they had roped the street off, and gasoline had been spilled all down an entire block. [1142]

Q. Mr. Sheppard, state whether or not you talked with Mrs. Stiff on the telephone on or about November 20, 1941, with reference to Wayne Douglas, in which you told her in substance or effect, for her husband to tell Wayne Douglas not to pull any more trips, and not to ask any questions?

A. No, sir.

Q. Under whose employ was Wayne Douglas at that time? Who had control of him?

A. Mr. Stiff,—Earl Stiff.

Q. You had nothing to do with his hiring or firing? A. No.

Q. I see. Mr. Sheppard, did you on or about November 16, 1941, while district manager of the Idaho Gas & Oil Company at Boise, Idaho, or at any other time,—

Mr. Penfield: I wonder if you would read that question, Mr. Reporter?

(Thereupon the question was read aloud by the reporter as hereinabove recorded.)

Trial Examiner Riemer: Let's hold it down to November 16, first, Mr. Moyle.

Mr. Moyle: All right, I will withdraw the question and reframe it. [1144]

Q. Mr. Sheppard, did you on or about November 16, 1941, while district manager of the Idaho Gas & Oil Company at Boise, Idaho, attempt to induce an employee of the Idaho Gas & Oil Company to report to the Idaho Refining Company

(Testimony of Willard A. Sheppard.)

whether truck drivers employed by the Idaho Refining Company at Boise were members of the Teamsters Union? A. No, sir.

Mr. Penfield: It seems to me that that question has already been asked and answered by the witness.

Trial Examiner Riemer: No, I think this involves testimony of another witness. It is concerned with the testimony of,—well, I am not sure, and since I am not sure, the objection is overruled.

Q. And did you advise an employee of the Idaho Gas & Oil Company at that time that employees who joined or belonged to the Teamsters Union would be discharged?

A. I never did discuss the unions or anything pertaining to them with any of the Idaho Gas & Oil Company or the Idaho Refining Company's employees at any time.

We had no trouble with unions over there; the subject was never mentioned.

Q. I see. Did you ever make any inquiry whenever a man was hired, as to whether or not he was a member of the union? A. No, sir.

Q. Was his hiring irrespective of that, or did it have anything further to do with it? [1145]

A. Never had anything to do with it. Whenever an applicant would come in, I would give him a form to fill out; in other words, an employment application form, for him to fill out in duplicate, and if I hired him as an employee, I would merely mail a copy of it into Pocatello and notify them that I had hired this particular employee. [1146]